

# OVERSIGHT OF THE DEFENSE PRODUCTION ACT: ISSUES AND OPPORTUNITIES FOR REAUTHOR- IZATION

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## HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS FIRST SESSION

ON  
EXAMINING HOW THE FEDERAL AGENCIES RESPONSIBLE FOR IMPLE-  
MENTATION OF THE DEFENSE PRODUCTION ACT (DPA) ARE BEING  
USED TO SUPPORT NATIONAL DEFENSE

JULY 16, 2013

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## **OVERSIGHT OF THE DEFENSE PRODUCTION ACT: ISSUES AND OPPORTUNITIES FOR RE- AUTHORIZATION**

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**TUESDAY, JULY 16, 2013**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
*Washington, DC.*

The Committee met at 10:03 a.m. in room SD-538, Dirksen Senate Office Building, Hon. Tim Johnson, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF CHAIRMAN TIM JOHNSON**

Chairman JOHNSON. I call this hearing to order. While we are waiting for a quorum, I will begin this hearing on DPA.

Today, the Committee continues its oversight of the Defense Production Act. In addition, today's hearing is the first step as the Committee considers the reauthorization of the DPA, which is set to expire on September 30, 2014.

The DPA was originally passed in 1950 in the aftermath of World War II and in the midst of the Korean War. The legislation gave the President authority to ensure the timely delivery of necessary supplies and equipment for the Armed Services and promote domestic industrial production.

Over time, the purpose of the DPA has evolved as the economy has globalized and the threats to national security have shifted. Today, the DPA continues to play an important role supporting our Armed Services. In addition, the DPA provides essential tools for the Government to better respond to natural disasters and acts of terrorism. In recent years, the authorities granted under the DPA have been used to provide supplies and support to emergency recovery efforts, such as after Hurricane Katrina.

This morning, we will hear from the Department of Defense, Department of Commerce, as well as the Federal Emergency Management Agency. Each of these agencies plays a critical role in the implementation of the DPA. I look forward to hearing our witnesses' views on the effectiveness and the need for reauthorization of the DPA as well as areas where the Administration believes legislative changes might be appropriate to improve the law and better protect our national security.

When the DPA was last reauthorized, it was passed by unanimous consent in the Senate on the same day of its introduction. I am hopeful that the Committee can work in a similar bipartisan

fashion this time. I look forward to working with my colleagues to reauthorize the DPA.

With that, I now turn to Ranking Member Crapo for his opening statement.

#### **STATEMENT OF SENATOR MIKE CRAPO**

Senator CRAPO. Thank you, Mr. Chairman.

As the United States continues to face conflicts overseas as well as terrorist threats and natural disasters at home, it is again time to consider reauthorization of the Defense Production Act, commonly referred to as the DPA.

When its authorities are properly exercised, the DPA ensures adequate and timely delivery of critical materials and maintains our national defense posture to help us meet the demands of national emergencies. The DPA, amended and reauthorized some 51 times, remains a powerful resource that demonstrates how strongly our national defense capabilities rely on our Nation's economic strength and flexibility to preserve the readiness of our national defense to prepare and respond to military conflict, domestic disasters, or acts of terror in the United States.

The DPA has enabled Presidents for more than 60 years to meet evolving threats to U.S. national security within the confines of a consolidated defense industrial base and the challenges of a globalized economy. Most recently, Presidential uses of DPA authorities have been applied both in national defense and in natural disaster contexts. The DPA has been used to prioritize the provision of night vision equipment for Afghanistan, bulletproof vests and the anti-mine MRAP vehicles for Iraq, and terror screening systems for the FBI. DPA authorities have also been used to restore critical infrastructure following Hurricane Katrina and provide interpretive services for Superstorm Sandy victims.

It has been some time since the Committee has had an occasion to formally hear from the witnesses about the effectiveness and the problems encountered with the DPA's programs. I look forward to this morning's testimony to help us evaluate how the President is using the authorities granted to him under the Act in order to assure that those DPA authorities are being properly exercised by the President and in accordance with the law.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Crapo.

This morning, opening statements will be limited to the Chairman and Ranking Member to allow more time for questions from the Committee Members. I would like to remind my colleagues that the record will be open for the next 7 days for opening statements and any other materials you would like to submit.

Now, I would like to welcome the witnesses for our panel today. First, Frank Kendall is the Under Secretary for Acquisition, Technology, and Logistics at the Department of Defense. Eric Hirschhorn is the Under Secretary for Industry and Security at the U.S. Department of Commerce. And, finally, Richard Serino is the Deputy Administrator of the Federal Emergency Management Agency.

I thank all of you for being here today. I will ask the witnesses to limit your remarks to 5 minutes. Your written statements will be submitted for the record.

Under Secretary Kendall, please proceed.

**STATEMENT OF FRANK KENDALL, UNDER SECRETARY FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS, DEPARTMENT OF DEFENSE**

Mr. KENDALL. Good morning, Chairman Johnson, Ranking Member Crapo, Members of the Committee. Thank you for this opportunity to discuss the current programs and projects operating under the Defense Production Act.

Today, I want to clearly convey the Defense Department's support for a 5-year reauthorization of all existing DPA provisions. We need the capabilities provided by the DPA today as much as we ever have during the more than 60 years of the Act's existence. I will address each of the currently active titles of the DPA, Titles I, III, and VII, and I will cover the topics that the Committee requested that we discuss.

Over the last six decades, we have relied on the DPA to enable the acceleration of critical defense materiel and urgent operational requirements to our warfighters, I think as was mentioned in the opening statements. Most recently, Title I has enabled the rapid fielding of items such as Counter-Improvised Explosive Device systems, Mine Resistant Ambush Protected vehicles, MRAPs, and Intelligence Surveillance and Reconnaissance platforms, among many others. The DPA contributes directly to the success of many Joint Urgent Operational Needs, called JUONs, acquisitions, a key element of our accomplishments in the contingency operations in Iraq and Afghanistan.

Turning to Title III, there are currently 41 DPA Title III initiatives. Thirty-seven of these are under contract and the other four are expected to be under contract by the end of fiscal year 2013. Title III projects generally fall into three broad categories: Electronic materials and devices, advanced structural materials, and power and energy. There are also projects involving ammunition, optical materials and devices, and machining technologies.

Notable successes of Title III projects include the Readout Integrated Circuit Project, conducted in Idaho; gallium nitride technology used in radar and electronic warfare, being developed in Massachusetts, North Carolina, and New Jersey; a high-purity beryllium metal project in Ohio; and the Armor Structures Transformation Initiative in Johnstown, Pennsylvania. All of these projects have direct positive impact to the warfighter and our weapons systems.

Each Title III project is a cooperative Government-industry effort involving shared funding and planning. Project goals and contract terms are tailored to the market and technological conditions for each industrial resource or critical technology item. Potential Title III projects undergo a rigorous vetting process to ensure that they are both eligible for Title III action and likely to result in commercially viable production capabilities. Once a critical need for an innovative technology is established by the Government, DPA Title III provides the ability to use a variety of financial incentives to in-

dustry to make investments in production capabilities that will increase capacity to meet the national defense requirement.

New, expanded, and modernized domestic industrial capabilities, one, reduce the risk of foreign dependencies caused by geopolitical factors or other economic issues, and two, strengthen the economic and technological competitiveness of U.S. manufacturers. Improvements in production capabilities due to Title III projects have resulted in improved defense capabilities, reduced production costs, lowered prices, and improved product quality.

Title VII contains a number of provisions. I would like to mention the Defense Production Act Committee, which was established by the last DPA reauthorization. The DPAC has greatly benefited the Department of Defense through its coordinated interagency analysis of potential shortfalls in supply chains that are essential to national defense. The DPA Committee has four primary interagency working groups that focus on power and energy, metals, telecommunications, and lightweight materials. In the past year, our Metals Working Group released a Request for Proposal, and the other interagency groups have reached internal agreement on priority efforts moving forward.

The DPA Committee report for 2012 admittedly is late, but it has been completed and all 17 Department secretaries are in the process of signing. The Department of Defense will host the next Committee meeting this coming fall.

I would like to say a word about the need for reauthorization. Specifically, Title I of the Defense Production Act is vital to ensure timely DOD access to industrial resources during both peacetime and periods of conflict. Title III authorizes domestic sources for critical components, critical technology, and industrial resources essential for the execution of the national security strategy of the United States. Title VII mechanisms enable the Defense Department, as well as our interagency counterparts, to effectively manage and deliver critical capabilities as permitted through the DPA.

In conclusion, the Defense Production Act continues to provide unique and important authorities that directly support the health of our defense industrial base. The Department of Defense fully supports a 5-year reauthorization of all the existing DPA provisions currently scheduled to expire in September of 2014. The DPA authorities enabled us to meet the challenges of the last 60 years and continue to provide products that are of great importance to our national security.

Thank you for the opportunity to discuss the reauthorization of this important Act. I look forward to taking your questions.

Chairman JOHNSON. Thank you.

Under Secretary Hirschhorn, please proceed.

**STATEMENT OF ERIC L. HIRSCHHORN, UNDER SECRETARY FOR INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE**

Mr. HIRSCHHORN. Thank you, Mr. Chairman and Members of the Committee. I appreciate the opportunity to address the role of the Commerce Department under the DPA, the Defense Production Act.

We administer the Defense Priorities and Allocations System, which is known as DPAS, analyze the health of the U.S. defense

industrial base, and report annually to Congress on offsets in defense trade.

As you know, Title I authorizes the President to require acceptance and priority performance of national defense orders and to allocate goods and services as necessary for the national defense. We have had similar authority in the Department of Commerce since the DPA was enacted in 1950.

The Bureau of Industry and Security implements these authorities through the Defense Priorities and Allocations Systems Regulation, or DPAS. The key elements of DPAS are mandatory acceptance of rated orders, preferential scheduling, and an extension or flow-down of priority ratings throughout the supply chain. A priority rating notifies the supplier that it must accept and give the order priority over unrated or lower rated orders. We have found that the private sector is well versed in DPAS and appreciates that the Defense Production Act protects them from liability if they are required to reschedule an unrated order.

Commerce has authorized the Departments of Defense, Energy, and Homeland Security, plus the General Services Administration, to place priority ratings on orders that are, quote, "necessary or appropriate to promote the national defense." Commerce also may authorize other Government agencies, foreign governments, critical infrastructure owners and operators, and companies on a case-by-case basis to place priority ratings on other contracts or orders.

DOD, as Mr. Kendall has noted, is the principal user of the DPAS system. We work closely with Defense to expedite the delivery of resources needed to support such critical requirements for the military as Interceptor Body Armor procurement, the Counter IED program, and the Mine Resistant Ambush Protected Vehicle program.

We have also worked closely with FEMA, represented by Mr. Serino, to support emergency preparedness and critical infrastructure requirements, for example, supporting the Corps of Engineers repair and expansion of the hurricane protection system for the Louisiana Gulf Coast region. The Corps placed priority ratings to expedite delivery of pumps, structural steel and concrete for levees and flood walls, and other infrastructure to reduce the risk of flood damage.

Since the 2009 DPA reauthorization, we have also collaborated with the five other departments that have priorities and allocations authority and with the Department of Homeland Security to develop a consistent Federal priorities and allocations system.

Under Section 705 of the Act, we conduct surveys and assessments of defense-related industries and technologies. Using these studies, Commerce and Defense can, for example, monitor trends, benchmark industry performance, and raise awareness of diminishing or endangered manufacturing capabilities. Our current studies include assessments of the U.S. space industry supply chain, the cartridge and propellant actuated device industry, and the underwater acoustics and transducers industry.

Under Section 723 of the Act, we report annually to the Congress on the effects of offsets in defense trade. Such offsets encompass a range of compensation practices required by foreign governments as a condition of buying U.S. defense articles and services. We sit

on the Defense Production Act Committee, or DPAC, which advises on the effective use of the Act's authorities. We are active in its study groups, including the group assessing the use of DPA authorities to support disaster preparedness and response and critical infrastructure protection.

In sum, the Defense Production Act is essential to our Nation's security and we look forward to working with you toward a 5-year reauthorization of its nonpermanent provisions.

Thank you, and I will be happy to take your questions.

Chairman JOHNSON. Thank you.

Deputy Administrator Serino, please proceed.

**STATEMENT OF RICHARD SERINO, DEPUTY ADMINISTRATOR,  
FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT  
OF HOMELAND SECURITY**

Mr. SERINO. Thank you. Good morning, Mr. Chairman, Ranking Member Crapo, Members of the Committee. I am Richard Serino, Deputy Administrator for FEMA. On behalf of FEMA and the Department of Homeland Security, I appreciate the opportunity to appear before you to support the five-year authorization for the nonpermanent provisions of the Defense Production Act and to discuss the importance of DPA to support our national defense, including disaster preparedness and response, protection and restoration of critical infrastructure, operations and the homeland security capabilities.

The DPA is the primary source of Presidential authorities to expedite the supply of materials and services needed in both military and civil preparedness and response. Although FEMA does not use these authorities often, they are a critical tool in the toolbox to support our ability to prepare for and respond to natural disasters and other threats. While a few provisions of the DPA are permanent, expiration of the nonpermanent authorities would undermine the ability to prepare for and respond to natural disasters and other threats, such as an earthquake, a hurricane, or an incident involving weapons of mass destruction.

I would like to discuss Title I in particular, which authorizes the priority treatment of contracts and orders. While the priority authority is primarily used to support the Department of Defense programs, it serves an important function for the Homeland Security purposes. As with rated orders in support of military programs, rated orders for Homeland Security programs are used to ensure on-time performance when delays could place lives and property at greater risk.

Specifically, the priorities authority can be used to support disaster preparedness and response activities under Title VI of the Stafford Act. After Hurricane Katrina, the priorities authority was used to speed delivery of equipment needed to restore real service in the Gulf Coast region. After Hurricane Sandy, FEMA also used it to place contracts for telephone interpreter services to enable communications with diverse populations that were impacted by the disaster.

FEMA has also used the priorities authority to support timely repair and modernization of critical equipment that supports emergency preparedness and response activities. For example, the pri-

maries authority was used to support timely modernization of the FEMA National Radio System and to support computer network and other operations in the National Response Coordination Center.

Along with its other responsibilities to coordinate Federal emergency preparedness and response activities, FEMA provides Governmentwide coordination guidance for the use of DPA authorities on behalf of the Secretary of Homeland Security. FEMA works with all the relevant Federal agencies to ensure effective use and proper implementation of the DPA, to include educating these agencies about the ability to incorporate DPA in planning for emergencies.

Without renewal of the expiring provisions of DPA, a critical statutory authority to ensure timely procurement of materials and services to protect and restore critical infrastructure operations, whether they are key transportation capabilities, floodwalls, or levees, would be lost. Without the DPA, DHS and other Federal agencies would have no authority to prioritize contracts or resources needed for emergency preparedness, for critical infrastructure restoration, protection, for and lessening the risks associated with a terrorist attack.

In closing, I urge that Congress reauthorize the DPA authorities that remain critical to our national defense.

Thank you, Chairman Johnson and Senator Crapo, for the opportunity to appear before you today. I will be pleased to answer any questions you or the Committee may have. Thank you.

Chairman JOHNSON. Thank you.

I would like to begin with a question for all of our witnesses. It has been partially answered, but why is it important to reauthorize the DPA and not let the authority lapse? Under Secretary Kendall, let us start with you.

Mr. KENDALL. Mr. Chairman, the DPA gives us the authority to do things that we would not have and that are very important both to national security and to responding to emergencies that are not normally considered necessarily national security.

It allows us to acquire things and set priorities with industry under Title I, which is very important to us. Industry has no obligation to prioritize national security requirements above commercial requirements, and, in fact, many times they are financially motivated to do otherwise. So DPA allows us to mandate that. It is part of all of our contracts.

Title III allows us to invest money that improves the manufacturing capabilities where industry would not invest otherwise when it is important for national security. These are things that are of great benefit to the Department and which we would not be able to do were it not for the Act.

Chairman JOHNSON. Under Secretary Hirschhorn.

Mr. HIRSCHHORN. Having Title I authority enables us to ensure that the Defense Department, FEMA, and other agencies, as necessary, will get what they need when they need it. As Under Secretary Kendall pointed out, absent DPA, there is no guarantee that private contractors will be willing to put DOD or FEMA orders ahead of unrated orders.

There is limited authority in Section 18 of the Selective Service Act if DPA Title I were to lapse, but it is quite limited. It is much

less than we have today. It is only available to support procurement for the Armed Forces. So, in effect, it would take away what this Committee has given in terms of Homeland Security elements. It does not apply to service contracts. It very importantly does not provide contractors with the protection against claims if they put rated orders ahead of unrated orders. And it does not include allocation authority for possible use in a national security emergency situation involving shortages.

It would also wipe away our ability to report to the Congress on offsets, which is something that this Committee has had great interest in and has asked us to do. Our authority for that flows from the Defense Production Act. Similarly, our Defense Industrial Base Assessment Programs would also lapse if the DPA is not reauthorized.

Chairman JOHNSON. Deputy Administrator Serino.

Mr. SERINO. It is an important tool that we have, although FEMA, we do not use it that often, only two to three times a year. It is an important tool to have in the toolbox and having that tool when the disasters happen, because we do not know when disaster is going to happen, but it is an ability—it is a really important tool for us to have in order to prepare for and respond to and help recover from disasters.

Chairman JOHNSON. Effective interagency coordination is essential to the DPA. Can each of you please discuss how you view the collaboration between various agencies? Under Secretary Hirschhorn, let us start with you.

Mr. HIRSCHHORN. Our collaboration with the other agencies involved is excellent. We work with the Defense Department on a daily basis. They are, again, the heaviest user of the Defense Priorities and Allocations System. We work closely with FEMA when disasters arise. We are also working with the other departments that have been given Defense Priorities and Allocations authority to help develop a harmonized Federal system to ensure that the various sets of rules are congruent with one another.

Chairman JOHNSON. Deputy Administrator Serino.

Mr. SERINO. We have had the opportunity to work closely with many Federal agencies when a disaster strikes, also with the Department of Commerce. Once we make the determination we can respond, we can report back to Commerce in order to move that forward. One of the key parts is making sure that other agencies that come in are familiar with the DPA and able to utilize that. But we have had very good working relationships with all the different agencies that we work with and departments and we have been able to continue to move forward with them on this.

Chairman JOHNSON. Under Secretary Kendall.

Mr. KENDALL. Mr. Chairman, I can only echo what my colleagues have said. The cooperation, I believe, is excellent. The committees or the working groups that work under the Defense Production Act Committee, which include subject matter experts and have been able to work together very well to prioritize different projects. I think it has been extremely beneficial and a great example of good cooperation.

Chairman JOHNSON. Under Secretary Kendall, during the last year, Congress has debated the use of DPA Title III funds to ad-

vance U.S.-based production of biofuels. I, along with some of my colleagues here, fought to prevent restrictions on the use of DPA funds for biofuels last year. Can you please discuss how the Administration is continuing to use DPA to increase funding for biofuels that are essential to our national security needs.

Mr. KENDALL. Yes. The biofuels project is one of the Title III projects that we are currently pursuing. As I mentioned, I think, in my opening statement, power and energy is one of the main areas of emphasis under Title III.

The biofuels project is a relatively small project at this time. It is designed to determine if there are viable candidates for production, for scale production at economic rates for various biofuel sources. So what we awarded and what I certified earlier in this year, we are in the process of finalizing the contracts. But there are four contracts for approximately \$6 million each that will do the initial design studies, site location studies, some of the regulatory things to prepare for a second phase, which has not been funded yet, which is not under contract yet, which would build actual production facilities to demonstrate the viability of production at industrial capacity, at scale capacity, including being competitive with petroleum-based fuels.

This is overall a part of the larger program that the President has initiated to create energy independence. But biofuels and alternative fuel sources are very important to us, obviously, as we operate in the world. We are—the DOD is one of the biggest consumers of fuel, certainly in the Government, but also in the country, and access to secure sources of fuel is very important to us strategically. So the biofuels project is a relatively small effort that is part of a much larger program to increase our energy independence.

Chairman JOHNSON. Senator Crapo.

Senator CRAPO. Thank you very much, Mr. Chairman.

Mr. Kendall, I want to follow up with you a little more on the biofuels question. As you know, there was a bit of a stir created by the initiation of this project and the basic question was, is it causing us to expend more resources than we can in the development and obtaining of the necessary fuels for our defense in the United States. The basic question that I understood being asked was, how is it that biofuels projects—which, by the way, I am a huge supporter of biofuels—but the question is, how is it that biofuels projects are considered to be a strategic and critical material essential for the national defense purposes at a time when the United States is positioned to become one of the world's larger net exporters of oil.

Mr. KENDALL. Well, fuels are obviously of strategic importance to the Department and to the country. I am aware of the developments in the United States with regard to increased sources of fuel in the United States. Those are still emerging and ongoing. And as I said earlier, we will reconsider, or we will consider as a separate decision the second phase of this project approximately a year from now. But at this point, what we are trying to do is act as a catalyst to help this industry move forward to where it can be competitive and provide us with a secure source of fuel.

And I am not going to get into a long strategic discussion about this, but while the United States may be in a situation where it

will have increased sources of fuel for some period of time, that time is not infinite. So there is a value that may be longer-term to work like this.

I would also point out that this is just, again, one piece of what the Department and the Administration is doing. The Department of Energy is involved in this project, as well as is the Department of Agriculture. So the Department of Defense, this is a relatively small part of our overall energy program, but it is also a relatively small part of the activities under DPA.

Senator CRAPO. Now, could I take from that, then, that there is not much of a likelihood that projects that are either ongoing or under consideration will be held up or otherwise impacted by the decision to move forward with the biofuels projects?

Mr. KENDALL. This—everything is obviously about prioritization, but I do not see this squeezing out, at this point in time, at least, other projects that I would consider a higher priority for the Department.

Senator CRAPO. All right. Thank you.

And for Mr. Serino and Mr. Kendall, as I look at this, there are some 13 different departments and agencies with delegable authority under the DPAC umbrella. Governmentwide, then, it would seem that Title I holds the biggest potential for the use of DPA authorities. First, am I correct about that, and how much is the Defense Production Act Committee focused on Title I versus Title III authorities? Mr. Serino, do you want to start.

Mr. SERINO. So, with Title I, as I mentioned, FEMA makes a determination only, like, two or three times a year. We do not use the Title I authorities that much, but when we do, it is actually for critical—usually following a disaster is when we usually utilize that, for example, Sandy with the interpretive services. We used it during and after Katrina both for rail and also to help with the Army Corps of Engineers. So we use it very rarely, but when we do use it, it is an important opportunity. We make the determination for other Federal agencies that come in and then back to Commerce.

Senator CRAPO. Mr. Kendall and Mr. Hirschhorn, would either of you like to respond?

Mr. KENDALL. Just to mention that Title I authorities are in all of our contracts and they are floated down to our subcontracts. So industry is used to them. We make them available. They are invoked relatively rarely. When they are invoked, it is for an important reason. Historically, it goes back to, for example, production of the Abrams tank some time ago. The Secretary of Defense has some authorities to increase priority and the President has some authorities beyond that to an even higher priority. They are invaluable to us when we do need them, but we do not do them indiscriminately when they are not really required.

Senator CRAPO. Thank you.

Mr. Hirschhorn.

Mr. HIRSCHHORN. I would only echo Under Secretary Kendall. When we have to have something, we have to have it. It is not something that we do lightly, or that we do every day. And, again, industry seems to work quite well with it. We very rarely have a

situation where a company is unwilling to comply. It is almost unheard of.

Senator CRAPO. All right. Thank you.

Chairman JOHNSON. Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman.

First, let me thank the witnesses individually. I have had the privilege of working with Secretary Kendall on the Armed Services Committee and the Defense Appropriations Subcommittee. He has done a superb job as acquisitions head in the Pentagon, so thank you, Mr. Secretary.

Secretary Hirschhorn came up to Rhode Island and was superb in terms of looking at some of the specific needs we have and some of the programs that Commerce can respond.

And, Administrator Serino, we get to see more and more of your people, unfortunately, with Sandy, with floods, but your colleagues are superb. They do extraordinary jobs. I seldom get stopped by my constituents and commended about the good work that we are doing, but your colleagues get that kind of commendation because they are terrific, so my best to them all. Thank you.

Let me ask a question, though. We are reauthorizing a bill that was drafted decades ago, and one of the most significant changes is that it is just the issue of cyber technology and cyber threats, military, civilian, across every agency. So, Secretary Kendall, I will begin with you and then go down the row. What changes do we have to make, and if you have an impression, you can give it to us and then follow up later with more specifics. What changes must we make to capture this new world of cyber and perhaps the new technological dynamic?

Mr. KENDALL. Thank you, Senator Reed. With regard to the DPA, I am not aware of any specific changes that the cyber situation would require.

More generally, I am very concerned about the loss of information to cyber threats right now, particularly on classified information. Industry is required to protect information to a certain level, but it is generally not to a very high standard and we really do not have a mechanism right now with industry to ensure that that information is protected. And I am talking specifically about design information, which might not be classified. But if you require that information, it certainly shortens your lead time to build things and it reduces your cost, and that is an advantage we do not want to give people who are our potential adversaries.

So I have been working on that and I am in the process of looking at some changes in the contracting procedures that we use that will strengthen our standards. So I agree with you, absolutely, that it is a significant problem, but I do not have a specific DPA change that I would recommend for it.

Senator REED. I would—given the fact that, hopefully, we are on a path to reauthorize it, this might be a vehicle in which wise contractual provisions or authorities could be given to you. So I would encourage you, as you develop these thoughts, to pass them along, not just to the Banking Committee, but also the Armed Services Committee, *et cetera*, because this is no great flash of wisdom, but this is just the beginning of a multi-year phenomenon of extraordinary change, and if we are going to reauthorize this legislation,

let us not be looking back to the 1956 and 1970s. Let us look ahead to 2050, 2060.

Secretary Hirschhorn.

Mr. HIRSCHHORN. I do not think I have anything to add in terms of the Defense Production Act. I certainly agree that we need to focus very sharply on cyber threats. I think both the Congress and the Administration are spending a lot of time on it. I wish I could offer some solution related to the Defense Production Act, but as I sit here, I do not have one.

Senator REED. But, again, going forward, if you think consciously and your colleagues about is there language necessary in contracts that will give priorities? Is there a gap? We have pretty much sort of—if we had to go out and build some Liberty ships tomorrow, we could do it with the Defense Production Act, I think. But can we build a sophisticated system? Can we protect classified information on design—or unclassified information on design, *et cetera*?

Secretary Kendall, you had a thought?

Mr. KENDALL. Yes, sir. I understand where you are coming from, I think. Let me take it for the—if not for the record, at least to work with you separately.

Senator REED. Yes.

Mr. KENDALL. I think there is a vehicle here that we could use to do some good, but I have not thought through exactly how that might be done, so I take your point.

Senator REED. I encourage thinking through. Thank you.

And just, Mr. Administrator, your comments.

Mr. SERINO. Just—it is something that is—the language is currently—we have looked at this and there is good language in there that we are able to utilize that, but I agree with Under Secretary Kendall. It may be an opportunity to go back and look. We actually, during a national-level exercise a couple of years ago, we actually looked at the use that would address cyber issues and cyber security issues and look at the possibility of using DPA for that if it looked like there was a vehicle to do that.

Senator REED. I would—it would be interesting if you could share that. I know there is cross-pollination of ideas, but again, in your capacity, you have to react to not only a physical disaster in the United States, but a cyber disaster, and there might be useful information from your exercises that you could give back to DOD and to Commerce that could help frame this issue.

Again, gentlemen, thank you for your extraordinary service to the Nation. Thank you.

Chairman JOHNSON. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman, and before Senator Reed leaves, I just want to thank you, gentlemen, for appearing. Thank you for raising it. I mean, I had not—I have been looking at this. I do not know that much about the Defense Production Act, but I think you are dead on on an issue and it is not something I have considered. I would encourage our colleagues here. I am on the Intelligence Committee and I do not know how, as you think through the—as they think through the capabilities in this reauthorization, how they might also intersect with some of the folks on the IC. But I really appreciate you raising this issue. It is not

something that would immediately come to mind, but I think it is a great point.

Senator REED. I feel like our colleagues did in 1920, talking about these newfangled airplanes.

[Laughter.]

Senator WARNER. Amen. Amen. For everything that we have—as we all kind of struggle with this on various committees and how we get a framework in place, you know, thinking through some of the emergency components, I commend the Member for his comments and questions. Put me as “ditto,” echoing what he said.

I want to actually go back to Assistant Secretary Kendall and actually follow up on Senator Crapo’s comments about the biofuels program. I understand that it is a relatively small initiative, and it is one, as you, I think, mentioned, that has both DOD, DOE, and Agriculture involved. But I actually think there is kind of a legitimate point. I concur—Senator Crapo and I agree that our country needs an “all of the above” energy policy, and we have seen remarkable progress in terms of gas and even some traditional oil reserves. But the notion that we are putting all our eggs in one basket is, I do not think, smart.

And I actually think, particularly what Secretary Mabus has done on the Navy side, has made sense. I would point out the fact that DOD spends about \$15 billion a year on fuel, and in the last couple of years, we have had \$3 billion worth of unforeseen fuel charges. In, I believe, fiscal year 2012 and 2013, DOD was forced to ask Congress for a combined \$2 billion in reprogramming funds to mitigate the price volatility in fuel costs.

And I would argue that on biofuels, and let me quickly add here with due respect to the Chairman, hopefully noncorn-based biofuels, that this is an industry that held a lot of promise, but because there has been this lack of ability to kind of generate the volume, we have not seen the production costs come down. And it is my understanding that if we do get into this phase two, that DOD will be able to purchase close to 170 million gallons per year of drop-in military fuel, that this production will begin in 2016.

And I would raise the point, and I have met with the Secretary on this, that the weighted price of this biofuel—and this has all been, I think, publicly released—would be less than \$4 a gallon, and actually substantially less than \$4 per gallon. I am not sure whether Secretary Kendall wants to give the actual price, but the price is actually lower in 2016 than what we are paying for conventional fuels.

So, I would argue, while this may be a relatively minor program, that the investments under the Defense Production Act that have been made by DOD, by DOE and Agriculture to create something that could be a new industry for America meets the DOD’s needs. We have got a \$15 billion fuel cost that is very volatile. Being able to lock in at a very market competitive price a stable supply of fuel, and that stable supply could actually grow, would be tremendously valuable.

And I have actually almost used up all my time, so, Mr. Kendall, if you would like to make a comment on that. I think you ought to be out there trumpeting this program and not simply saying it

is simply one little side program. I think it will be one of the great successes of this Act.

Mr. KENDALL. Thank you, Senator Warner. The reason we are doing the project is because it has that potential. Your figures on the 50 million dollar—gallons and so on—50 billion dollars, I am sorry—is correct. The target year is 2016. And it is a condition of the program that the production capacity be competitive with commercial prices, which means roughly in the neighborhood of \$4 a gallon. And the current projections are—

Senator WARNER. My understanding is we are going to actually come in lower than that.

Mr. KENDALL. Well, we would need to come in at least at \$4 a gallon, I would say. And the projections from the four people that we have selected to continue with this first phase suggest that they will get there. So that remains to be proven, of course.

I do want to go back to one thing you said earlier. We have not had to pay billions of dollars for unplanned costs for fuel. We were very concerned in fiscal year 2012 that that would happen, and at one point we were considering reprogramming, I believe. But we were able to manage our way through that period without having to do that. So I just want to correct the record for that because it came up.

But your points about the purpose of the project and its potential, I think, are accurate. That is the intent. Ray Mabus, Secretary Mabus has been a very strong leader in this area and it is that vision that has driven his support for the project.

Senator WARNER. Thank you, Mr. Chairman.

Chairman JOHNSON. Unfortunately, we have not achieved a quorum today for votes on the pending nominations. We will postpone the markup today and instead vote on Thursday before the monetary policy hearing.

I want to thank our witnesses for their testimony today and I look forward to working with you as we begin to explore legislation to reauthorize the DPA.

This hearing is adjourned.

[Whereupon, at 10:53 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

**PREPARED STATEMENT OF FRANK KENDALL**  
 UNDER SECRETARY FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS  
 DEPARTMENT OF DEFENSE

JULY 16, 2013

Chairman Johnson, Ranking Member Crapo and distinguished Members of the Committee, thank you for this opportunity to discuss the important role of the Defense Production Act (DPA) in supporting our Nation's defense needs.

The DPA provides important authorities for the Department of Defense (DOD), both to ensure timely delivery of equipment and services essential to our armed forces, and to promote domestic industrial capabilities to produce superior defense systems at affordable costs. My testimony today will discuss the need for reauthorization of the Defense Production Act (DPA), provide an overview of the current projects operating under DPA, and outline the activities of the Defense Production Act Committee. I will discuss the priorities authority, business incentives and other important directives provided in Titles I, III and VII, all of which are important to the continued health and responsiveness of the United States defense industrial base.

**NEED FOR REAUTHORIZATION**

The Defense Production Act, currently set to expire September 2014, is a fundamental enabler for the Department to successfully produce and deliver needed capabilities to our warfighters. Over the last six decades, we have relied on this Act to assist in the modernization and acceleration of critical defense elements and to help the Department meet urgent operational requirements such as: Counter Improvised Explosive Device (IED) systems, Mine Resistant Ambush Protected Vehicles (MRAPs), and Intelligence, Surveillance and Reconnaissance (ISR) platforms. This Act has facilitated the success of a large number of Joint Urgent Operational Needs acquisition processes—a key element to our accomplishments in recent and ongoing contingency operations. The DPA is also essential in transitioning new and next-generation technologies that are indispensable to meeting national security requirements identified by Government customers; a priority for the Department of Defense as we work to increase and maintain the technological superiority of our Nation.

Without the authorities provided under the Defense Production Act, our efforts to protect and support the men and women of our all-volunteer force would not be as effective. Our ability to maintain a healthy, lean and vibrant United States industrial base would also be reduced. Both of these goals are crucial elements to our National Defense Strategy. I urge the Committee to again support reauthorization of the Defense Production Act, an Act which has served us so well for over 60 years.

**CURRENT DPA PROJECTS AND ACTIVITIES**

**TITLE I**

Title I of the Defense Production Act is essential to ensure timely DOD access to industrial resources during both peacetime and periods of conflict. Title I authorizes the President: (1) to require U.S. industry to prioritize and allocate materials, services and facilities as necessary to promote our national defense and (2) to allocate materials, services, and facilities, as necessary or appropriate to promote the national defense.<sup>1</sup> These Presidential authorities are delegated to the Department of Commerce with respect to industrial resources. Commerce has re-delegated to DOD authority under the Defense Priorities and Allocations System (DPAS) to place priority-rated contracts and orders for industrial resources in support of DOD Approved Programs. The Department uses DPA authorizations in a standard contracting provision for most weapon system related procurements that require industrial resources.

DPAS priority ratings help to assure that rated orders will be performed on time. For the most part, contractors and suppliers act on their own to fulfill their obligations under rated orders, without further action required by the Government. However, when problems occur that cannot be resolved by the contractors and suppliers, the DPAS provides for Special Priorities Assistance (SPA), whereby problems can be resolved with the assistance of DOD or, ultimately, the Department of Commerce.

Although important in peacetime, the DPAS as implemented under Title I authority is indispensable in times of conflict. It provides the ability and flexibility to ad-

<sup>1</sup> The DPA defines the term "national defense" to mean programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity.

dress the critical procurement needs of the warfighter. Even though Title I and DPAS were first enacted over 60 years ago, experience with providing direct support to the operations in Afghanistan and Iraq demonstrates their continued importance. The DPAS played an important role during these operations in expediting delivery of equipment needed to counter new threats and protect the lives of our armed forces. The DPAS was instrumental in speeding the deployment of new and increased quantities of personal body armor, Counter Improvised Explosive Device (IED) systems, Mine Resistant Ambush Protected Vehicles (MRAPs), and Intelligence, Surveillance and Reconnaissance (ISR) platforms, night vision equipment, weapon targeting systems, and many more items needed to support our Armed Forces.

Over the past decade, DPA's Title I authority has proven invaluable in supporting both our Armed Forces and those of allied nations. From the onset of the conflicts in Afghanistan and Iraq, DOD saw a need for lighter and stronger personal body armor. However, the capability to ramp up production of such body armor was constrained by the limited availability of Small Arms Protective Insert plates that provide the hard armor component of the Improved Outer Tactical Vest. From 2002 to 2006, we used a Priority Allocation of Industrial Resources (PAIR) Task Force with multi-service and Department of Commerce participation to prioritize DOD requirements and then used the DPAS to direct the manufacture and distribution of this product in order to support our highest priority requirements. By 2006, U.S. manufacturing capacity had grown sufficiently to satisfy all rated order delivery requirements, eliminating the need for further SPA directives.

In 2003, in support of Operation Enduring Freedom, the Department asked Commerce to issue a Directive to a key supplier supporting the Predator program that required the supplier to satisfy the orders it had received related to the Predator ahead of other competing rated orders based on urgent operational requirements. Commerce issued the Directive the same day it was requested and the critical supplier was able to meet the required delivery date because the directive "reprioritized" work in its facility, moving the Predator-related order to the front of the production queue.

In 2006, we used the DPAS to accelerate production of Counter IED systems. Insurgents in Iraq had changed tactics, planting more powerful bombs and using different triggering methods to defeat vehicle armor and evade U.S. countermeasures. To counter this threat, the Department dramatically increased its investment in electronic jamming technology to detect and disarm IEDs. To ensure production priority, the Secretary of Defense approved the use of the highest rating authority available under the DPAS, known as the "DX" rating, to support the rapid delivery of Counter IED systems.

In 2007, we formed an MRAP PAIR Task Force to review and prioritize DOD requirements for materials used in MRAPs and competing programs. We identified potential industry bottlenecks and quantified our vehicle component requirements for items such as steel plate, axles, and tires. By combining the information accumulated from these activities, we were able to identify production capacity gaps in industry that would impact the MRAP and other DOD vehicle and armor programs. This knowledge of the industrial base, along with the Secretary's highest rating authorization for the MRAP enabled us to clearly and quickly communicate the Department's prioritized requirements to industry. As lower-rated programs were impacted by the surge to meet MRAP demand, we also increased industrial capacity through information sharing, capital investment, developing new sources, and by accelerating changes to specifications and standards that permitted increased production rates without sacrificing quality.

In late 2008, we received an urgent request from the DOD's Central Command to increase production of ISR systems. In this case, we determined that simply elevating priority status to the highest level would not effectively address constraints among competing, equally important, acquisition programs. We mitigated many of the production constraints through the use of the SPA process. In one case involving the procurement of hundreds of sensor arrays/antennas from a contractor in a Security of Supply country, we were able to accelerate delivery to meet operational requirements, despite the fact that the DPAS has no standing outside the United States. We made the foreign supplier aware that DOD had a reciprocal Security of Supply arrangement with the partner nation and the foreign supplier agreed to meet DOD's required delivery dates.

In 2010, the Department engaged with industry to address numerous delivery issues on behalf of the Special Operations Command (SOCOM) to expedite the fielding of night vision systems in Afghanistan. An Industrial Capability Assessment was done to determine industry's ability to deliver these systems quickly and an arrangement was brokered between the Command and competing Service require-

ments to preserve access for all while meeting the urgent needs of SOCOM. The assessment provided insight into industry constraints and enabled the prioritization of delivery requirements by using DPAS priority rating authority to reconcile competing Service needs.

In 2012, a partner nation asked for help expediting the refurbishment of submarine environmental control systems. These atmospheric controls were urgently needed by both U.S. and the ally's navies to avoid disruptions of fleet deployments, but the contractor was limited in its ability to meet the needs of both customers. The Department mediated the dialogue between the buying activities and contractor to improve refurbishment rates. Additional Government Furnished Equipment was supplied to the contractor to improve throughput rates and both nations' schedules were aligned to improve contractor efficiency.

In 2013, the Army requested SPA on behalf of a supplier of 120mm Enhanced Mortar Targeting Systems (EMTAS). The purpose was to expedite delivery of bearings, used in these systems. The Joint Chiefs of Staff had highlighted the military importance of deploying these systems to Afghanistan as rapidly as possible under a "Joint Urgent Operational Need" (JUON) statement. The Department worked with the EMTAS supplier, the bearing vendor and Commerce to develop a plan for expediting delivery. This plan was implemented in a matter of a few days under a Department of Commerce Directive.

The above examples are a sampling of successes we've seen through the use of the Defense Production Act over the past decade. Title I authorities continue to assist us effectively both in an operational environment and also domestically with our industrial base. Reauthorizing this Act and the activities outlined in Title I will ensure the Department remains successful in the expeditious delivery of critical defense capabilities.

### **TITLE III**

Title III of the DPA authorizes various actions by the President to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of the national security strategy of the United States. Title III authorities were initially used during the Korean War era to establish the industrial infrastructure needed to transition aircraft production into the jet age and for other industrial base needs. Jet aircraft production required vastly increased quantities of such materials as aluminum and titanium. Much of the U.S. processing capabilities for these and dozens of other key materials can trace their roots to Title III projects that were undertaken during the 1950s.

Today's Title III projects continue to support the transition to new and next-generation technologies that are essential to meeting national security requirements identified by Government customers. Once a critical need for an innovative technology is established by a Government acquisition program, DPA Title III has the ability to provide a variety of financial incentives to industry to make investments in production capabilities that will increase capacity to meet the national defense requirement.

Title III projects help promote the use and insertion of new technologies for defense purposes in several ways. First, Government purchases and purchase commitments reduce the financial risks that discourage potential new producers from creating new capacity. Second, the new production capabilities stimulated by Title III incentives are generally more efficient and result in lower production costs and product prices. Third, Title III projects commonly generate information about the performance characteristics of new materials and support testing and qualification to promote the broader use of these materials in defense systems.

Without Title III efforts to promote and incentivize the transition of new technologies to affordable use, beneficial use of new technologies can be delayed for many years. Potential producers do not invest in efficient production capacity without financial incentives and potential users are reluctant to commit to new technologies due to high first adopter costs and lack of assured supply. Title III projects effectively overcome these market barriers to production expansion and technology adoption, accelerating insertion into defense applications.

The primary objective of every Title III project is to improve domestic production capabilities to support national defense requirements. New, expanded, and modernized domestic industrial capabilities: (1) reduce the risks of foreign dependencies caused by geo-political factors or other economic issues; and (2) strengthen the economic and technological competitiveness of U.S. manufacturers. Improvements in production capabilities, due to Title III projects, have resulted in reduced production costs, lowered acquisition prices, and improved product quality. Domestic production sources supported by Title III actions provide an added element of trust regarding

product integrity. Trusted sources are increasingly important for such products as microelectronics, in which malicious defects can be difficult to detect.

The broad impact of Title III projects in supporting production of state-of-the-art defense systems and in strengthening domestic production capabilities for leading-edge technologies is illustrated in the following five examples:

1. In April 2013, a new manufacturing facility that produces specialized materials for lithium ion batteries opened in California. The facility, created with Title III support, will provide a secure, domestically owned, and domestically based source of materials that are critical to the production of batteries for Government satellite and space programs. These materials, which have never before been manufactured in the United States, will enable production of satellite batteries that last more than 10 years with more than 60,000 charge-discharge cycles. Title III support has enabled a U.S. manufacturer to expand from manufacturing lithium ion cells exclusively for high-technology medical applications to become a leading designer and supplier of lithium ion cells for aerospace and other military applications.
2. Another Title III project is supporting development of production capabilities for a next-generation military GPS device, which is the smallest, lightest weight and lowest power-consuming device of its type available today. It enables the creation of GPS receivers that provide significant size, weight and power reduction for military systems in use around the world. Title III support has been a critical element of the "low-cost GPS program," which has already saved the Government an estimated \$100 million and is expected to provide DOD over \$300 million more in savings and cost avoidance over the next 5 years.
3. A Title III project involving GaN on SiC X-Band Monolithic Microwave Integrate Circuits (MMIC) caps a decade of substantial investment from the Government and the contractor (including DARPA's Wide Bandgap Semiconductor program). The project prepared GaN technology for insertion into a broad range of military systems, delivering better value to the taxpayer and warfighter. Benefits of GaN technology includes enabling radar systems to track a target 78 percent farther in range with the same accuracy or, for a different mission, reduce the radar antenna size by half while more than doubling the radar search area. Over the course of this program the contractor's GaN process yield improved by more than 3X. The improved yield (along with other fab operations improvements) corresponds to a greater than 76 percent reduction in the cost of a MMIC power amplifier since the start of the program. In addition to the improved yield the contractor accumulated over a million hours of reliability data, demonstrating reliability that supports military system lifetimes with significant margin. As a result of this initiative, GaN technology is mature and available for immediate insertion in a variety of defense systems.
4. Another Title III project has been instrumental in re-establishing the infrastructure, facilities, and equipment necessary to support a production capacity of 160,000 pounds per year of high-purity beryllium metal. High-purity beryllium is used extensively in structures and instruments found in defense weapon systems where stiffness, low weight, good thermal and electrical conductivity, and dimensional stability are required. Essential strategic uses, where no suitable substitute exists for high-purity beryllium, include: airborne Forward Looking Infrared (FLIR) systems for fighter aircraft and attack helicopters; guidance systems on existing strategic missiles; surveillance satellites; ballistic missile defense systems; and reflectors for high flux, nuclear test reactors. Beryllium imports are unable to meet the purity levels required for many critical defense applications.
5. In partnership with the Departments of Agriculture and Energy, another Title III project is catalyzing a domestic capability to produce cost-competitive, commercial-scale, renewable fuels for the military. As one of the world's largest consumers of petroleum, the Department has an interest in the long-term diversification of fuel supplies. If successful, the project may produce more than 170M gallons per year of drop-in, military-compatible renewable fuels with initial production capacity by 2016 and at an average cost of less than \$4 per gallon.

While Title III projects target national defense needs, they generally result in more broad-based benefits to the U.S. economy. The benefits I just cited—reduced foreign dependencies, greater economic and technological competitiveness, as well as the creation of high-tech American jobs—are all important to the U.S. economy.

Title III projects can also support other important goals, such as reduced energy consumption and CO<sub>2</sub> emissions.

An example of this is a Title III project that was undertaken to improve production capabilities for monolithic microwave integrated circuits (MMICs) needed for next-generation radar systems resulted in improved production capabilities for solid state lighting (SSL), using light emitting diodes (LEDs). LED lighting reduces energy consumption by three quarters compared to fluorescent lighting, while reducing CO<sub>2</sub> emissions and use of toxic mercury.

Another Title III project to improve production capabilities for reactive plastic CO<sub>2</sub> absorbent material, used to improve breathing equipment for diving, has also resulted in improved anesthesia technology for use in operating rooms. This innovative Title III material absorbs more CO<sub>2</sub> and fewer anesthetics than granular absorbent. It also eliminates temperature concerns and the toxic waste associated with granular lithium.

Most people in this hearing room are carrying a device, which performs better and is cheaper, due to a Title III project that was completed several years ago. The project involved manufacturing capabilities for gallium arsenide wafers. The primary purpose of this project was to support defense needs for advanced integrated circuits, but gallium arsenide devices are also important components in cell phones. U.S. Title III contractors more than doubled their share of the world market for gallium arsenide wafers over the course of the Title III effort and reduced wafer prices by more than one third. So, everyone's cell phone is cheaper, performs better, and is more likely to contain integrated circuits fabricated using domestically produced wafers, due to Title III actions.

These three examples are representative of the many commercial spill-over benefits resulting from Title III projects, beyond the benefits to our national defense.

Each Title III project is a cooperative Government/Industry business partnership involving shared funding and planning. Project goals and contract terms are tailored to the market and technological conditions for each industrial resource or critical technology item. Potential Title III projects undergo a rigorous vetting process to ensure that they are both eligible for Title III action and likely to result in commercially viable production capabilities. Eligibility is based primarily on a Determination, required by the Defense Production Act, that specific criteria have been met. A project may not be initiated unless the President determines that:

1. The targeted resource or item is essential to the national defense;
2. Industry cannot reasonably be expected to provide the needed resource or item in a timely manner, without Title III action.

Once a potential project is determined to be eligible for Title III action, it is assessed in terms of various market factors. For example, Title III generally targets materials that are required by multiple defense programs. Title III action to address an industrial resource shortfall is particularly important, when the cost of addressing the shortfall cannot be justified by individual programs. Multiple defense programs have benefited from Title III projects involving such items as radiation-hardened microelectronics, structural composite materials, and high-performance batteries. Market conditions are also assessed to determine how best to structure and incentivize a possible Title III effort and whether production capabilities resulting from such an effort would remain economically viable after the Title III commitment has concluded.

Title III provides a number of important tools to support needed improvements in domestic production capabilities. The purchase and purchase commitment authorities provide the foundation for virtually all Title III actions. Purchases are used to assist in the creation of new production capabilities, and purchase commitments are used to guarantee a market for new production output. Title III also authorizes installation of Government-owned equipment in production facilities and the development of substitutes for strategic and critical materials. These authorities are used, as appropriate, to supplement purchase and purchase commitment actions.

There are currently 41 Title III initiatives. Thirty-seven of these are under contract, and the other four are expected to be under contract by the end of the fiscal year. Many of these projects can be grouped into three broad categories—electronic materials and devices, advanced structural materials and power and energy. There are also projects involving ammunition, optical materials and devices, machining technologies, and a variety of other technologies.

The electronic materials and devices projects involve enabling technologies, without which potential advances in microelectronics would be far more limited. These materials offer advantages in terms of faster device performance, greater resistance to radiation and temperature, reduced power requirements, reduced circuit size, increased circuit density, and the capability to operate at higher frequency levels. Ad-

vances in electronic materials enable new capabilities for defense systems and improvements in old capabilities. The advanced structural materials offer improvements in terms of strength, weight, durability, and resistance to extreme temperatures. Power and energy initiatives focus on technologies such as flexible solar cells, advanced battery technologies and fuel cells that enable advanced operational capabilities and reduce operational and maintenance costs. These benefits are particularly important in aerospace applications.

I have already mentioned several ongoing or recent Title III projects. A sampling of other current Title III projects includes:

- Establishment of the world's first manufacturing production facility of carbon nanotube (CNT) yarn and sheet material. This project's emphasis is on expanding flexible, scalable, and modular production processes; improving product quality and yield; and reducing manufacturing costs. Carbon nanotubes exhibit extraordinary strength and unique physical properties and result in lighter weight and greater ballistic protection for the warfighter and vehicle armor, stronger, lighter structural components, as well as enhanced electromagnetic interference (EMI) and electromagnetic pulse (EMP) protection.
- The upgrade and refurbishment of the facilities of the sole domestic source for heavy forgings required by the U.S. Navy and other DOD services. The DOD applications for these forgings include propulsion shafts for surface and sub-surface naval vessels, periscope tubes, ring forgings for bull gears, and reactor vessels. Heavy forgings are unique and require a 10,000 ton, open die forging press (the largest in North America) in order to produce parts that begin with ingots that are up to 11 feet in diameter and weigh up to 600,000 lbs. The focus of this Title III project is to address production constraints and single points of failure that are critical to maintain the supply of heavy forgings to the DOD.
- The scale up for production of Polyhedral Oligomeric Silsesquioxanes (POSS<sup>TM</sup>). POSS has been demonstrated to enhance the performance of polymers in such applications as radiation shielding for space-based microelectronics, photo-resistant material for semiconductor manufacturing, food packaging, optical lenses, and aircraft tires.
- Establishment of a long-term, viable, world-class domestic manufacturer of high-energy density lithium-ion (Li-ion) batteries that is responsive to customer requirements with respect to performance, reliability, quality, delivery, and price. High energy density Li-ion batteries are suitable for a number of military systems including enhancing the endurance of Unmanned Aerial Vehicles (UAVs) and providing portable power to support the mission for the dismounted soldier, long endurance autonomous systems, tactical vehicles, unattended sensors, and reconnaissance and surveillance systems. The intent is to create a flexible production line capable of producing multiple battery form factors for both military and commercial applications, as well as achieving performance results needed to meet unique warfighter requirements.
- Establishment of a domestic source for the production of light-weight ammunition cartridge casings using a high-strength polymer material. Ammunition casings produced with this material may provide significant advantages over traditional brass casings, such as decreased combat carrying weight for ground and air operations, with cost savings obtained through reduced fuel consumption, as well as lower transportation/shipping and material costs. Other potential benefits may include increased muzzle velocities, improved weapons accuracy, and prolonged barrel and weapon life. The initial focus of the project is the development and qualification of lightweight .50 caliber machine gun rounds that can be utilized in conventionally fielded weapon systems at a comparable cost to standard brass ammunition.

#### **TITLE VII: ACTIVITIES OF THE DEFENSE PRODUCTION ACT COMMITTEE**

I also wish to express support for DPA Title VII authorities. Title VII contains a range of provisions, including enforcement mechanisms, which help protect the Nation's security. Of particular importance are Section 705, which provides authority to collect industrial base information; Section 708, which provides authority to enter into voluntary agreements (and antitrust protections for participants in such agreements); Section 721, which authorizes the President to suspend or prohibit a foreign acquisition or merger with a U.S. firm, when the transaction provides a credible threat to U.S. national security (reviews of foreign acquisitions under Section 721 are conducted by the interagency Committee on Foreign Investment in the U.S. (CFIUS)); and Section 722, which established the Defense Production Act Committee. These enforcement mechanisms enable the Department, as well as our inter-

agency counterparts, to effectively manage and deliver critical elements as permitted through the DPA. Without it, our Nation's security would be put at risk.

Newly created during the last DPA reauthorization, the Defense Production Act Committee (DPAC) is an interagency body, established by Section 722, which identifies whole-of-Government approaches to strengthen domestic industrial base capabilities to meet national defense supply requirements under normal and emergency conditions. The Committee advises the President on the effective use of the DPA and develops recommendations for changes to the law and the effective use of the delegated authorities under this Act. To achieve these objectives, the Committee engages in assessment activities and enables information sharing related to the industrial base and DPA authorities.

The DPAC has established Industrial Capability Study Groups to conduct assessments and develop long-term strategies for addressing the supply chain problems of various industrial sectors. Each of these study groups is chaired by a senior subject-matter expert from a civilian agency who directs the group's work, while DOD provides operational staff and budgetary support for assessment activities. Currently, the Committee is operating four study groups to analyze supply chain issues that are essential to national defense: (1) metal fabrication, led by the Department of Commerce; (2) power and energy, led by the Department of Energy; (3) telecommunications, led by the White House Office of Science & Technology Policy; and (4) lightweight materials, co-led by the Department of Energy and the Army. The work of the DPAC analysis led to a DPA Title III investment earlier this year to preserve and modernize the sole domestic source for heavy forging products for Navy applications including propulsion shafts and nuclear reactor containment vessels. I expect that another recommendation for investment will be made later this year.

## CONCLUSION

The Defense Production Act continues to provide unique and important authorities that directly support the continued health of our Defense industrial base. The Department of Defense fully supports a reauthorization of all the existing DPA provisions currently scheduled to expire in September of 2014. The DPA enabled us to meet the challenges of the last 60 years and provides important mechanisms that continue to be of vital importance to our national security. Thank you for the opportunity to discuss the reauthorization of this important Act, I look forward to taking your questions.

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## PREPARED STATEMENT OF ERIC L. HIRSCHHORN UNDER SECRETARY OF COMMERCE FOR INDUSTRY AND SECURITY DEPARTMENT OF COMMERCE

JULY 16, 2013

Chairman Johnson, Senator Crapo, Members of the Committee:

I appreciate the opportunity to testify before the Committee this morning on the important role the Defense Production Act (DPA) continues to play in supporting our national defense. I will focus my comments on the nonpermanent DPA authorities in Titles I and VII that are relevant to the Department of Commerce and the activities of the Department under those authorities.

The Department of Commerce plays several roles in implementing DPA authorities related to the defense industrial base. First, under Title I, the Department administers the Defense Priorities and Allocations System. Second, under Title VII, the Department analyzes the health of U.S. defense industrial base sectors. Third, also under Title VII, the Department submits an annual report to Congress on offsets in defense trade. All three DPA authorities need to be reauthorized before September 30, 2014. I will briefly discuss each of these roles.

### I. Defense Priorities and Allocations System

Title I of the Defense Production Act authorizes the President to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense. These authorities to prioritize contracts and require allocations for industrial resources were most recently delegated to the Secretary of Commerce by Executive Order 13603 which was issued in March 2012. However, the Department has had similar authority since the DPA was first enacted in 1950.

Today, the Bureau of Industry and Security implements these authorities through the Defense Priorities and Allocations System regulation (15 CFR Part 700) (most commonly known as the "DPAS"). The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders and for the allocation of materials, services and facilities and is regularly used to support the acquisition of industrial resources needed to support U.S. national defense requirements, especially by the Department of Defense.

All companies in the United States must comply with the provisions of the DPAS regulation. The key elements of the DPAS regulation are mandatory acceptance of rated orders, preferential scheduling, and extension of priority ratings throughout the supply chain. Under the DPAS, there are two levels of priority designated by the symbols "DO" and "DX." All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders have equal priority with each other and take preference over "DO" rated orders and unrated orders.

A "priority rating" on a contract or order notifies a supplier that the contract is supporting an approved national defense program and that the supplier must accept and give the order priority over unrated commercial orders (or lower rated orders in the event of competing "DX" and "DO" orders), as necessary, to meet the required delivery date. A contractor in receipt of a rated order, in turn, places "priority rated orders" with its subcontractors for parts and components.

Our industrial base is well-versed in the DPAS based on more than 60 years of experience in receiving and placing priority rated contracts and orders to support Department of Defense requirements. The private sector also appreciates that the DPA includes a protection against claims in the event a contractor, subcontractor, or supplier is required to reschedule an unrated order after receipt of a rated order.

The Department of Commerce has delegated authority to the Departments of Defense (DOD), Energy (DOE), and Homeland Security (DHS), and the General Services Administration, to place priority ratings on contracts or orders for industrial resources to support programs determined by DOD, DOE, or DHS as "necessary or appropriate to promote the national defense." The Department of Commerce may also authorize other Government agencies, foreign governments, owners and operators of critical infrastructure, or companies to place priority ratings on contracts or orders on a case-by-case basis. Such requests must first be determined as "necessary or appropriate to promote the national defense" by DOD, DOE, or DHS.

Let me briefly highlight a few examples of the Department's work in administering the DPAS.

The Department of Defense remains the primary user of the DPAS. My Department has worked closely with DOD to support the U.S. Armed Forces through the DPAS to expedite the delivery of industrial resources needed to support critical operational requirements, including the Interceptor Body Armor, counter-improvised explosive devices, and the Mine Resistant Ambush Protected vehicle programs. In addition, Commerce, in coordination with the Department of Defense, has authorized foreign defense ministries to place priority ratings on contracts and orders with U.S. suppliers for equipment needed to support coalition operations in Iraq and Afghanistan. My Department is very proud of the role we have played through the DPAS to support our servicemen and servicewomen and to assist our coalition partners.

The Department has also worked closely with the Department of Homeland Security's Federal Emergency Management Agency through the DPAS to support emergency preparedness and critical infrastructure protection and restoration requirements. For example, the Department worked with DHS to authorize the U.S. Army Corps of Engineers to use the DPAS to support the repair and expansion of the Hurricane Protection System for the Louisiana Gulf Coast Region. The Corps of Engineers placed priority ratings on hundreds of contracts to expedite delivery of pumps, structural steel and concrete for levees and floodwalls, and other related flood control infrastructure to reduce the risk of floodwaters from future natural disasters. The Department has also worked with DHS to authorize other Federal agencies (including the Department of State, the Federal Bureau of Investigation, and Commerce's National Oceanic and Atmospheric Administration) to place priority ratings on orders to expedite the delivery of industrial resources needed to enhance the protection of Government facilities and to support systems designed to detect and track severe weather.

These examples, and the testimony from my DOD and DHS colleagues, demonstrate how the DPAS remains critically relevant to support our national defense, including military and homeland security requirements.

Since the 2009 reauthorization of the Defense Production Act, the Department has also collaborated with the five other Federal departments that are delegated prior-

ities and allocations authority with respect to other resources (Agriculture, Energy, Defense, Health and Human Services, and Transportation) and with DHS to develop and implement a consistent and unified Federal priorities and allocations system to the extent practicable. The new rules being developed by the other departments for the resources under their priorities and allocations jurisdiction are based primarily on DPAS guidance and procedures and incorporate several key elements of the DPAS, including: mandatory acceptance of rated orders, preferential scheduling of rated orders to meet delivery requirements, and extension of priority ratings by contractors to lower-level suppliers and subcontractors. The Department of Commerce is also in the process of updating the DPAS regulation based on our collaboration with our interagency partners.

## **II. Defense Industrial Base Studies**

Under Section 705 of the DPA and Executive Order 13603, the Department also conducts surveys and assessments of defense-related industries and technologies. These assessments are usually requested by the Department of Defense. Using these industrial base studies, the Departments of Commerce and Defense can, for example, monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities. The studies also provide detailed data that are unavailable from other sources.

Currently, the Department of Commerce has a number of studies underway, including an assessment of the U.S. space industry supply chain. Commerce has partnered with NASA, the U.S. Air Force, and the National Reconnaissance Office to gain an understanding of the complicated network supporting the development, production and sustainment of products and services across the defense, intelligence community, civil and commercial space sectors. Additionally, Commerce is assessing the cartridge and propellant actuated device (CAD/PAD) industry, and the underwater acoustics and transducers industry. When completed, these assessments will provide the requesting agency or agencies with information needed to understand the health and viability of the studied sector.

## **III. Offsets in Defense Trade**

Pursuant to Section 723 of the DPA, the Department also reports to Congress annually on the impact of offsets in defense trade. Offsets in defense trade encompass a range of industrial compensation practices required by foreign governments as a condition of the purchase of defense articles and services from a nondomestic source. This mandatory compensation can be directly related to the purchased defense article or service or it can involve activities or goods unrelated to the defense sale.

The Department collects data annually from U.S. firms involved in defense exports with associated offset agreements in order to assess the impact of offsets in defense trade. In February 2013, the Department submitted its 17th report to Congress on offsets in defense trade, with data covering the 1993–2011 period. U.S. industry submitted 2012 offset data to the Department in June 2013 in accordance with the offset reporting regulation (15 CFR Part 701). The Department will analyze this data and present its findings to Congress later this year.

## **IV. Defense Production Act Committee**

The Department of Commerce is also a member of the interagency Defense Production Act Committee (DPAC) which was established pursuant to the 2009 DPA reauthorization to advise the President on the effective use of the Act's authority. The President has designated Homeland Security and Defense as rotating chairs of the DPAC. Commerce plays an active role in the work of study groups established by the DPAC, including the group that is assessing the use of DPA authorities to support disaster preparedness and response and critical infrastructure protection and restoration activities.

## **Summary**

In sum, the DPA provides authority for a variety of programs at the Department of Commerce of substantial importance to our Nation's security. The DPAS continues to facilitate the timely delivery of industrial resources to support the Department of Defense, coalition partners, and increasingly, to meet Homeland Security requirements. The DPA also facilitates valuable assessments of the health of key sectors of the defense industrial base and the impact of offsets in defense trade.

The Department of Commerce looks forward to working with the Committee to reauthorize the nonpermanent provisions of the Defense Production Act.

Thank you.

**PREPARED STATEMENT OF RICHARD SERINO**

DEPUTY ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY  
DEPARTMENT OF HOMELAND SECURITY

JULY 16, 2013

**Introduction**

Good morning, Mr. Chairman and Members of the Committee, I am Richard Serino, Deputy Administrator of the Federal Emergency Management Agency (FEMA). On behalf of FEMA and the Department of Homeland Security (DHS), I appreciate this opportunity to appear before you to support a 5-year reauthorization of the nonpermanent provisions of the Defense Production Act (DPA) and to discuss the importance of the DPA to support our national defense, including disaster preparedness and response, protection and restoration of critical infrastructure operations, and homeland security capabilities.

The DPA is the primary source of Presidential authorities to expedite the supply of materials and services needed for both military and civil emergency preparedness and response. While a few provisions of the DPA are permanent, expiration of the nonpermanent authorities would undermine the ability to prepare for and respond to natural disasters and other threats, such as an earthquake, a hurricane or an incident involving a weapon of mass destruction.

**Use of Title I Priorities Authority**

The use of DPA authorities has evolved over time. Title I of the DPA authorizes the priority treatment of contracts and orders. While the priorities authority is used primarily to support Department of Defense programs, it has gained increased importance for homeland security purposes, particularly since the Act was amended in 2003 and 2009. As with rated orders in support of military programs, rated orders for homeland security programs are used to ensure on-time performance when delays could place lives and property at greater risk.

Under Executive Order 13603, which delegates Presidential DPA authorities, six Federal agencies have jurisdiction over various types of resources. The priorities authority most often has been used for resources falling under the jurisdiction of the Department of Commerce (DOC), which include most manufactured goods and services. DOC has delegated to the Department of Homeland Security (DHS) its authority to place priority-rated orders for its own programs, for the purposes of emergency preparedness and response activities under the Stafford Act, critical infrastructure protection and restoration efforts, and measures to prevent, mitigate, and recover from acts of terrorism. DOC also has delegated its authority to the Department of Defense, and to other entities as needed.

It is important to note that the priorities authority is used only in support of eligible programs in circumstances when a procurement delay would prevent timely completion of a critical program or when a procurement problem occurs or is anticipated. Eligibility for application of the priorities authority is determined against a standard of "necessary or appropriate to promote the national defense," in accordance with section 101 of the Act. The Secretary of Homeland Security is delegated the responsibility for making this determination for civilian national defense programs (not pertaining to the military, space, or energy). FEMA makes these determinations on behalf of the Secretary.

By law, the priorities authority may be utilized to support a range of activities in support of the national defense, to include: programs for military and energy production and construction; military or critical infrastructure assistance to foreign nations; homeland security activities to prevent, mitigate damage from, or recover from terrorist attacks; and emergency preparedness activities under Title VI of the Stafford Act. FEMA has made determinations that programs are necessary or appropriate to promote the national defense across a range of civilian uses.

Priorities authority may be used to support disaster preparedness and response activities under Title VI of the Stafford Act. For example, after Hurricane Sandy, FEMA used priority ratings to place contracts for telephonic interpreter services to enable communications with the diverse population impacted by this disaster. After Hurricane Katrina, priorities authority was used to speed delivery of equipment needed to restore rail service in the Gulf Coast region. In addition, the U.S. Army Corps of Engineers was authorized to place priority ratings in contracts and orders for its program to repair and restore floodwalls and levees after Hurricane Katrina. In this case, the priorities authority was used to help prevent delays to improvements to the greater New Orleans Hurricane and Storm Damage Risk Reduction System.

Similarly, FEMA has used the priorities authority to support timely repair and modernization of critical equipment that supports emergency preparedness and response capabilities. For example, priorities authority was used to support timely modernization of the FEMA National Radio System and to support the computer network and other operations in the National Response Coordination Center.

Priority ratings can also be used in support of other homeland security programs. For example, FEMA determined that U.S. Customs and Border Protection (CBP) can use priority-rated contracts to support timely maintenance and upgrade of its P-3 Orion aircraft fleet. These planes are used primarily in the interdiction of drugs and other contraband destined for the United States, but are also used to support anti-terrorism and border protection missions. In another case, the priorities authority was used to ensure timely completion of perimeter security measures at the Boston airport and its seaports. The use of priority-rated contracts was needed to ensure timely delivery of high-tech camera equipment needed for these projects.

Within the past year, FEMA has also determined that various emergency preparedness and continuity of operations activities of the Architect of the Capitol (AOC) are in support of the national defense. This includes such AOC activities as providing and maintaining physical security and surveillance; electronic surveillance, detection and warning systems; fire alarm and suppression systems; life safety equipment; hazardous material protective equipment; hazardous material response equipment; and shelter-in-place equipment. It also includes efforts to establish and maintain redundancy for critical information and communications systems.

In addition to the U.S. Army Corps of Engineers and the Architect of the Capitol, several other Government agencies have been authorized by DOC to use priority-rated contracts in recent years to support specific homeland security activities after FEMA has made a determination that the activity was in support of the national defense.

For example, the National Nuclear Security Administration in the Department of Energy has used priorities authority to support several of its programs. It was used in support of the Second Line of Defense Program, the purpose of which is to strengthen the capability of international partners to deter, detect and interdict illicit trafficking in nuclear and other radioactive materials across international borders and through the global maritime shipping system. It was also used in support of the Nuclear Counterterrorism Incident Response program, which promotes first responder and law enforcement capabilities to respond to and mitigate nuclear and radiological incidents in the United States and worldwide.

In 2009, FEMA determined that the Department of Health and Human Services (HHS) program to combat the H1N1 influenza was eligible for priorities support. This program involved procurement of vaccines and anti-viral drugs and the development, manufacture, and supply of other medical countermeasures approved, licensed, or cleared by the Food and Drug Administration, such as biologics, equipment and devices.

Based upon FEMA determinations of eligibility, priorities authority is also being used in support of the State Department's Domestic Facilities and Personnel Protection Program, which provides for the security of domestic State Department facilities, U.S. Government personnel located in those facilities and foreign dignitaries visiting the United States.

#### **Use of Title VII Authorities**

Title VII contains a number of authorities—some permanent and some that will terminate in September 2014—if not reauthorized. One permanent section of the law—section 708—authorizes establishment of voluntary agreements. The purpose of a voluntary agreement is to allow cooperation among business competitors to expedite or expand the supply of critical materials or services by planning and coordinating actions in support of the national defense including Government emergency preparedness and response activities. Participants in a voluntary agreement are granted relief from antitrust laws under the provisions of section 708.

Another section of Title VII—section 722 of the DPA—establishes the Defense Production Act Committee to advise the President on the effective use of DPA authority. Section 722 provides that the Committee membership shall include the head of each Federal agency to which the President has delegated DPA authority. The Committee is chaired on an annual rotating basis by the Departments of Homeland Security and Defense. The Committee has established several working groups to study DPA and defense industrial base issues.

#### **Reauthorization of Expiring Provisions**

Along with other responsibilities to coordinate Federal emergency preparedness and response activities, FEMA provides Governmentwide coordination and guidance

for use of DPA authorities on behalf of the Secretary of Homeland Security, pursuant to Executive Order 13603. FEMA works with all relevant Federal agencies to ensure effective use and proper implementation of the DPA, to include awareness of the ability to incorporate the DPA in planning for emergencies.

Without renewal of expiring provisions of the DPA, a critical statutory authority to ensure timely procurement of materials and services to protect and restore critical infrastructure operations—whether they are key transportation capabilities, floodwalls, or levees—would be lost. Without the DPA, DHS and other Federal agencies would have no authority to prioritize contracts for resources needed for emergency preparedness, for critical infrastructure restoration or protection, or for lessening the risks associated with a terrorist attack. In closing, I urge that Congress reauthorize the DPA authorities that remain critical to our national defense.

Thank you, Chairman Johnson, for the opportunity to appear before you today, and I would be pleased to answer any questions you or other Members of the Committee may have.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR CRAPO  
FROM FRANK KENDALL**

**Q.1.a.** The Federal Government has not used the loan and loan guarantee authorities provided for in Title III in more than 30 years.

Under what circumstances were they used and why are they not used today, and if not used, should they be removed from the Act?

**A.1.a.** The loan/loan guarantee authorities in Title III of the Defense Production Act (DPA) were used extensively during the 1950s and 1960s. More than 1,700 loans totaling more than \$4 billion were made or guaranteed using the Title III authorities. No new loan guarantees or loans have been initiated since the DPA borrowing authority was replaced by an appropriations requirement in 1974.

In March 1982, Secretary of Defense Weinberger proposed an amendment to the DPA to grant \$2.5 billion in revolving Treasury borrowing authority to subsidize domestic materials production. In April 1982, Office of Management and Budget (OMB) Director Stockman responded that OMB could not support the proposed amendment because (1) "it is Administration policy to rely on the marketplace to improve the competitiveness of our industries to help reduce dependence on foreign sources;" (2) "the proposed legislation requests blanket project approval and 'backdoor' borrowing authority which is contrary to the provisions of the Congressional Budget Act of 1974;" and (3) "our analysis of the DOD proposal to subsidize domestic cobalt production indicates that it is substantially less costly to acquire stockpile protection by direct purchase." (Source: Letter dated April 15, 1982, from David Stockman, Director, OMB to Casper Weinberger, Secretary of Defense)

A compromise was subsequently reached between DOD and OMB in which DOD agreed "to utilize only purchase/purchase commitment agreements." DOD has continued to abide by this agreement. Since Title III activities were "resurrected" by DOD and Congress in the 1980s, Congress has amended Title III provisions several times to place limitations on use of the loan/loan guarantee authorities. Most recently, the Section 302(c)(1) DPA Reauthorization of 2009 (50 U.S.C. App. § 2092 (c)(1)) amended the loan/loan guarantee authorities to allow use of these authorities "only to the extent that an appropriations Act—(i) provides, in advance, budget authority for the cost of such guarantees, as defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. § 661a]; and (ii) establishes a limitation on the total loan principal that may be guaranteed." To date, no appropriations Act has included such provisions. Congressional action is required before the loan guarantee and loan authorities can be used.

The loan guarantee and loan authorities were cost-effective when used during the 1950s and 1960s. While they have not been used

since the 1960s, past experience suggests that they are potentially valuable tools to support national defense production and supply needs, particularly under emergency conditions. Additionally, these authorities reside with the President, and while they have not been used for nearly 30 years, the authorities are nevertheless an important tool for the President to ensure the availability of key domestic industrial base capabilities and these authorities should not be diminished.

**Q.1.b.** Similarly, the Title VII authority for a National Defense Executive Reserve appears dated, at least, in some of its language. It also either has never been used, or has been dormant for decades, does it need to be updated or eliminated?

**A.1.b.** DOD agrees that the current language of the Title VII authority for a National Defense Executive Reserve is designed to support a major mobilization of months or years. In Executive Order 13603, the President has authorized each Agency Head the discretion to create and activate National Defense Executive Reserve (NDER) units under their control. While there are no active NDER units in the Federal Government, the DPA NDER language is appropriate to govern the establishment of future units in the event of a catastrophic incident of sufficient magnitude to warrant its use. DOD does not believe that the current language needs to be updated or eliminated.

**Q.1.c.** Can you give any examples where DPA authorities, fell short in their implementation, or exceeded their scope or encountered any unintended consequences in any manner?

**A.1.c.** In short, none. The DPA authorities were the cornerstones of economic mobilization to support the Korean conflict during the 1950s and after more than six decades of use continue to play important roles in supporting the procurement needs of defense programs. The priorities authority continues to be a key element supporting DOD procurement and has also provided support for important homeland security activities—both for disaster preparedness and response and for counter-terrorism activities. The priorities authority has been used effectively with remarkably few problems for more than 60 years.

DOD has been making effective use of the Title III authorities since these authorities were resurrected in the 1980s. The authorities have been exercised on numerous occasions to ensure the availability of critical domestic production resources when the private sector is not incentivized to create or expand these capabilities. Today, these authorities are used primarily to expand domestic production capacity for key technologies, materials, and items to improve the quality of these technologies, reduce procurement costs for these technologies, and speed the integration of leading-edge technologies into defense systems. Title III incentives help reduce the technical and financial risk associated with the higher-risk projects that business is unwilling or unable to undertake but that hold great potential for promoting our national defense through better and more affordable advanced technologies. By reducing risk, the Title III incentives encourage private sector investment thus mitigating the need for sustained Government investments.

### **DOD use of “Title I” Priorities**

**Q.2.a.** Last year, the DOD exercised its authority under Title I with regard to about 300,000 contracts, about 20 percent of its contracts.

How is the decision to prioritize or not prioritize contracts pursuant to Title I authority made at your department?

**A.2.a.** Most recently in section 202a of Executive Order 13603, the President delegated DOD the authority to determine which programs are necessary or appropriate to support the National Defense with respect to military production and construction, military assistance to foreign nations, military use of civil transportation, stockpiles managed by DOD, space, and directly related activities.

To that end, DOD has established 14 approved categories of military-related programs that are identified in Schedule I of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700)-the Department of Commerce (DOC)-administered regulation covering the industrial resources under its priorities and allocations jurisdiction. All DOD contracts and orders for industrial resources associated with these 14 program categories are eligible to be issued as priority rated contracts in accordance with Title I and DOC’s delegation of authority to DOD to utilize the DPAS to support DOD contracting.

DOD has been authorized by DOC to use both DPAS levels of priority, designated by the symbols “DO” and “DX.” All “DO” rated orders for industrial resources have equal priority with each other and take preference over unrated orders. All “DX” rated orders for industrial resources have equal priority with each other and take preference over “DO” rated orders and unrated orders. Most DOD priority rated orders are rated “DO.” The use of the “DX” priority rating is justified on the basis of military need (highest national defense urgency) and industrial resource limitations that make it unlikely that required delivery schedules will be achieved without the “DX” priority rating. Only the Secretary or the Deputy Secretary of Defense can approve a program to use the “DX” priority rating, which is currently limited to supporting approximately a dozen programs.

**Q.2.b.** Who exactly has the authority to make those decisions and what are the criteria used?

**A.2.b.** All procuring activities within DOD have the authority to apply priority ratings to contracts or orders for industrial resources in accordance with the DPAS regulation, the Federal Acquisition Regulation (FAR 11.600), DOD Directive 4400.01, “Defense Production Act Programs,” and the DOD Priorities and Allocations Manual (DOD 4400.1-M). It is DOD policy that procuring activities shall assign a priority rating to all defense contracts and purchase orders for industrial resources associated with the 14 approved program categories, except when they contain items that DOC has determined are not eligible to be priority rated.

### **Biofuels**

**Q.3.a.** What is the likelihood that projects either ongoing or under consideration may be held up or otherwise impacted on account of the Defense Department’s decision to use unexpended “no year” fis-

cal year 12 funding to initiate a bio fuel project such as the one providing seed money to fund the startup of biofuel production plants for the Navy or its follow-ons? Will this become an issue in the future?

**A.3.a.** Existing or proposed Title III initiatives are not being impacted by the use of fiscal year 2012 funds for the Title III biofuel project. The fiscal year 2012 funds allocated for the biofuel project were appropriated as a programmatic add above the budget request and therefore are available to be used for the biofuel initiative. We do not anticipate this being a future hindrance.

**Q.3.b.** How is the bio fuels project considered to be a strategic and critical material essential for national defense purposes at a time when the United States is positioned to become one of the world's biggest net exporters of oil?

**A.3.b.** A robust advanced drop-in alternative fuels market is an essential element of our national energy security. Energy security for the Nation requires unrestricted, uninterrupted access to affordable energy sources to power our economy and military. Traditional fossil fuel-based petroleum is derived from crude oil that is finite, unevenly distributed, and concentrated in particular regions of the globe, not all of which are habitually friendly to U.S. interests. Advanced alternative transportation fuels that use a domestic feedstock will provide us a secure alternative that reduces the risks associated with petroleum dependence.

Additionally, section 106 of the Defense Production Act (50 U.S.C. App. § 2076) specifically designates energy as a strategic and critical material. Also, section 2(a)(6) of the Defense Production Act Declaration of Policy (50 U.S.C. App. § 2062 (a)(6)) states the congressional finding that “ . . . to further assure the adequate maintenance of the domestic industrial base, to the maximum extent possible, domestic energy supplies should be augmented through reliance on renewable energy sources (including solar, geothermal, wind, and biomass sources), more efficient energy storage and distribution technologies, and energy conservation measures;”.

**Q.3.c.** What criteria are used to make the determination?

**A.3.c.** Before action may be taken under the authorities of Title III of the Defense Production Act, section 303(a)(5) of the Act (50 U.S.C. App. § 2093(a)(5)) requires that a Determination be made that:

- (A) the industrial resource, material, or critical technology item is essential to the national defense; and
- (B) without Presidential action under this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner.

There were two Determinations made pursuant to the requirements of the Defense Production Act that validated the essentiality of biofuel to meet national defense needs. The first was approved on December 19, 2010, and the second was approved on January 8, 2013.

### **DPAC Report**

**Q.4.** The Defense Production Act Committee, or DPAC, has only one statutory responsibility—and, that is to provide its congressional oversight committees with an annual report that reviews the current use of DPA authorities and provides recommendations for improving DPA implementation in the Government, or amending the DPA statute, itself. This is the only measure which this Committee really has to measure how the authorities are used. Why then has no annual report been submitted for either 2011 or 2012, and when might the Committee get one, considering the statute is up for reauthorization?

**A.4.** The 2011 annual report was delivered to the House and Senate Banking Committees in August 2011. A combined 2012–2013 report was delivered on August 7, 2013. Just before the 2012 report was to be finalized, Executive Order 13603 was issued. The new order vastly expanded DPAC membership to 17 departments and agencies. Since section 722(d) of the Defense Production Act of 1950, as amended (50 U.S.C. App., § 2061 et seq.), requires that each DPAC member sign the annual report to Congress, it was infeasible to submit the report on time. To allow full participation by new members, the DPAC’s co-chairs, DOD and the Department of Homeland Security, agreed that the 2012 and 2013 reports would be combined into a single submission.

**Q.5.a.** There are some 13 departments and agencies with delegable authority under the DPAC umbrella. Governmentwide, then, it seems that Title I holds the biggest potential for the use DPA authorities.

How much is the Defense Production Act Committee focused on Title I versus Title III authorities?

**A.5.a.** The focus is roughly evenly split. The Department of Homeland Security leads a study group to discuss Title I issues, and DOD is leading four interagency study groups to evaluate potential Title III investments to mitigate industrial base shortfalls in the areas of telecommunications, power and energy, metal fabrication, and lightweight materials.

**Q.5.b.** Is emergency preparedness getting sufficient attention in the DPAC?

**A.5.b.** DOD believes that emergency preparedness is receiving the appropriate level of attention within the Defense Production Act Committee (DPAC) interagency review process.

**Q.5.c.** How useful or valuable is the work and focus of DPAC to the more nondefense-oriented agencies or departments?

**A.5.c.** There have been informative discussions among the DPAC interagency members regarding the use of Title I authorities for nondefense activities. DOD, through the DPAC industrial base analysis process, is working with nondefense agencies to identify cross-cutting industrial base issues that impact multiple agencies pertaining to the four focus areas identified above.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR KIRK FROM  
FRANK KENDALL**

**Q.1.a.** How does the Department of Defense evaluate its own organic industrial base when presented with requirements by either the Services or other agencies utilizing Defense Production Act (DPA) authorities?

**A.1.a.** As new requirements are presented from either the Services or other agencies, DOD uses a standardized Joint Depot Source of Repair (DSOR) process to analyze which of its military depots possesses the capability that best satisfies the requirement. For the arsenals, we have drafted a DOD instruction that will be issued this year, directing the arsenals to identify critical manufacturing capabilities and sustaining workloads annually, which will provide a solid basis for analyzing the capabilities these facilities provide. The use of DPA authorities would apply only to the private sector industrial base and not the DOD's organic industrial base.

**Q.1.b.** Does the Department differentiate between depots where a facility may be product focused and an arsenal that may have a broad range of capabilities?

**A.1.b.** There is no differentiation when considering the use of the DPA authorities. For depot maintenance requirements, the joint service community, through the Joint Depot Source of Repair (DSOR) process, analyzes and decides on the source of repair that provides the capability that best satisfies the requirement. For the arsenals, we have drafted a DOD instruction that will be issued this year, directing the arsenals to identify critical manufacturing capabilities and sustaining workloads annually. Therefore, given our best value-based approach, the process will not differentiate between product-focused and broad ranged capability activities when performing the analysis.

**Q.1.c.** What mechanism exists for one Service to assess another Service's organic industrial base to determine if they are able to support a given requirement?

**A.1.c.** It is DOD policy that the Joint community consider Centers of Industrial and Technical Excellence in determining DSOR. Additionally, the Services are required to consider existing capabilities based on previous DSOR assignments and regular interaction between the Services on capabilities being established. A collaborative process exists to determine the best source of repair for emerging requirements, which has a mechanism to assess each Service's capabilities to arrive at the best value source of repair. The manufacturing arsenals are managed by the Army, who articulates the capabilities of each during these inter-Service discussions.

**Q.1.d.** What data does the Office of the Secretary of Defense provide to other services to support this effort?

**A.1.d.** The Office of the Secretary of Defense provides oversight and guidance to the Joint DSOR process to ensure it provides the best value. Services establish depot maintenance capabilities and execute workload to sustain those capabilities. Data is made available across DOD for the community of practice. Additionally, we have drafted a DOD instruction relating to arsenals that will be issued this year, directing the arsenals to identify critical manufac-

turing capabilities and sustaining workloads annually. This will increase the visibility of the capabilities of the arsenals.

**Q.2.** Are there any statutory barriers to using DPA funds for capital equipment at organic industrial base facilities?

**A.2.** To use Defense Production Act (DPA) funds for capital equipment at organic industrial base facilities, DOD must comply with the limitations and determination requirements that are imposed by the DPA for all other uses of the authority. Additionally, section 303(e) of the DPA stipulates that if the President determines that such action will aid the national defense, the President is authorized to *inter alia*:

- (A) to procure and install additional equipment, facilities, processes or improvements to plants, factories, and other industrial facilities owned by the Federal Government;
- (B) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons.

**Q.3.** Many Department of Defense working-capital funded facilities already possess the physical infrastructure and some level of capital equipment to support requirements that may otherwise be funded by DPA authorities. Has the Department ever utilized public-private partnerships at organic industrial base facilities to take advantage of existing Government investments in physical infrastructure (*e.g.*, buildings) and a trained workforce? If so, please provide examples.

**A.3.** Yes. DOD uses public-private partnerships under 10 U.S.C. 2474 for depot-level maintenance when such partnerships are cost effective in providing improved support to the warfighter, and they maximize the utilization of the Government's facilities, equipment, and personnel at DOD depot-level maintenance activities. Furthermore, as we implement Performance-Based Logistics (PBL) strategies, amounts expended for the performance of depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial—and Technical Excellence (CITE) under any contract, in accordance with section 2474, are not counted for the purpose of the percentage limitation contained in 10 U.S.C. 2466(a).

Additionally, the Secretaries of the Military Departments have designated depot-level maintenance activities as CITEs in their recognized core competencies in accordance with 10 U.S.C. 2474. Each CITE is authorized and encouraged to enter into public-private partnerships comprising its own employees, private industry, and/or other entities outside the DOD to perform work within its depot-level maintenance core competencies and/or allow private industry to lease or otherwise use facilities and equipment at the CITE that is not fully utilized for the military department's own production and maintenance requirements. Examples of Public-Private Partnering for Sustainment include:

1. Rock Island Arsenal (RIA) Composite Armor Center. RIA entered a partnership with BAE in August 2009 to establish an organic composite armor production capability. The partnership utilizes BAE's strength in the development and produc-

tion of composite panels with the skilled workforce and capital equipment at RIA. The project is an Arsenal Support Program Initiative. It is located in some of the excess warehouse space at RIA. Renovations to the space provided the environment needed to prepare and consolidate the panels in a very effective and desirable work space.

2. Fleet Readiness Center-Southeast (FRCSE)/General Electric Aircraft Engines (GEAE). The F404 engine partnership features a public sector depot labor provision within a PBL arrangement. The partners in the fleet exchange component availability-based project are FRCSE, GEAE, and Naval Inventory Control Point, Philadelphia. The work occurs within a Government-industry arrangement under the authority of 10 U.S.C. 2474. The scope of the partnership covers 33 critical gas path aviation reparable components associated with the F404-GE-400/402 engines that power the F/A-18 Hornet. The aim of the initiative is to provide and improve the availability and reliability of the engine's components.

**Q.4.** When was the last time the Department of Defense reviewed the Joint Manufacturing and Technology Center at Rock Island Arsenal as a potential site for DPA activities?

**A.4.** DOD has never had a requirement to consider the Joint Manufacturing and Technology Center at Rock Island Arsenal as a potential site for Defense Production Act (DPA) activities; however, the Secretary of the Army makes capital investments annually in accordance with 10 U.S.C. 2476. Additionally, the Secretary of the Army designated Rock Island as a Center of Industrial and Technical Excellence under 10 U.S.C. 2474.

Also, before action can be taken under the authorities of Title III of the Defense Production Act, an industrial base shortfall that impacts essential national defense requirements must be identified and validated. This shortfall is typically articulated by the programs of record of military departments or agencies that rely on specific domestic industrial base resources to field or sustain key national defense capabilities.

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#### **RESPONSE TO WRITTEN QUESTIONS OF SENATOR MORAN FROM RICHARD KENDALL**

**Q.1.** The Special Inspector General for Afghanistan Reconstruction (SIGAR) conducted an audit on aircraft procurement for Afghanistan, specifically PC-12's and Mi-17's. Of the seven recommendations by SIGAR, DOD concurred with all but the first recommendation, which is to suspend activity on the aircraft until a memorandum of understanding between the Afghan Ministry of Interior and Defense can be completed and signed. As such, the DOD agrees with the complex milestones and considerable work that must be done to properly transition aircraft to the Afghans and yet DOD does not concur with suspending activity on the transition of new aircraft. Is the DOD negating the recommendations you acknowledge and agree must be done by committing the United States to transition activity on investments for aircraft when the measures to use and sustain them haven't been met? If no, provide

analysis that led to the decision to nonconcur with recommendation #1 and continuing aircraft transition activity to the Afghans despite their inability to meet operational capability as it relates to the SIGAR audit findings.

**A.1.** The Afghan Special Mission Wing (SMW) is critical to the success of the campaign in Afghanistan and to advancing U.S. national security objectives. Losing the SMW capability will mean that the Afghans will be unable to execute critical counterterrorism and counter narcotics operations. Moreover, the Afghans will have limited ability to disrupt and degrade the insurgent networks that enable Al Qaeda. Currently, the limiting factor for progress with the Mi-17 program is insufficient numbers of operable aircraft to sustain pilot currencies, advance prepared crews to night vision goggle (NVG) qualification, conduct required maintenance, and execute operations. The procurement process takes time, a decision to set aside or delay the purchase of new Mi-17 helicopters could result in a 2-year delay due to limited slots on the production line. The additional 30 Mi-17s enable the SMW to train NVG qualified crews faster, maintain/increase support to Afghan National Army Special Operations Force operations, and field four geographically dispersed squadrons.

The SIGAR report does not accurately capture the progress of the SMW in training, maintenance, or mission execution. The SMW currently has 47 of 67 Mi-17 pilots and 23 of 52 flight engineers with six, soon to be seven, NVG-trained crews (pilots and flight engineers). The unit executes its training while concurrently providing operational support to both the Government of the Islamic Republic of Afghanistan Ministry of Interior and Ministry of Defense. Between October 1, 2012, and July 15, 2013, the SMW executed over 4 dozen operations (approximately 80 percent during daylight hours). Recent operations demonstrate the Wing's capability to conduct 100 percent Afghan-planned, led, and crewed multi-ship daylight missions. A recent night operation was 100 percent Afghan-planned and led and 75 percent Afghan-crewed; this multi-ship mission demonstrated their increasing ability to fly missions under extreme conditions (*e.g.*, confined landing zone, maximum-allowable wind velocity, low illumination).

The current two maintenance and logistics contracts in support of the SMW expired at the end of August 2013. The new contract merges the previous two and addresses the recommendations in the SIGAR report regarding contractor performance metrics and a plan to transition responsibility to the Afghans. The transition plan includes the transfer of both management and operational functions and is based on specific milestones rather than a specific timeline. In terms of current progress, there are two Afghan maintenance managers leading production control meetings, setting priorities for aircraft, and briefing Afghan maintenance staff. Moreover, Afghans are currently performing regular maintenance on the Mi-17s with contractor oversight. Hands-on training for maintainers is essential, and additional aircraft are necessary to facilitate said training.

**Q.2.** Does DOD analysis currently include a timeline for proposed operational capability of PC-12's, Mi-17's and other planned fixed-wing aircraft? If yes, please provide this timeline. If no, provide a

proposed timeline whereby DOD anticipates the Afghans will be able to meet the demand for pilots, flight engineers, maintenance technicians, and security personnel to successfully operate and maintain current and planned fleets. What current program is in place for the training of fixed-wing pilots? How many candidates are currently in training? As part of this time line, please address the factors of vetting and training to meet full operational capability. Planned fleets means aircraft beyond the SMW and in addition to PC-12's and Mi-17's.

**A.2.** Yes. Please see table below that outlines each fixed-wing aircraft and Mi-17 operational capability dates.

Aircraft	Initial Operational Capability (IOC) (basic crews ready)	Full Operational Capability (FOC) (1.5 crew ratio per aircraft (a/c), plus perform missions)
PC-12 (Spec Msn Wg) .....	3rd Quarter (Q) 2015	3d Q 2016
Mi-17 helicopter .....	Already IOC	With 86 a/c FOC 1st Q 2016
C-208 light lift plane .....	Already IOC	With 26 a/c FOC 1st Q 2015
C-130 medium lift .....	1st Q 2016	With 4 a/c FOC 4th Q 2018
A-29 light attack plane .....	4th Q 2016	With 20 a/c-2019

*Current training program in place:* All Afghan pilot trainees regardless of platform are required to achieve a minimum English language skill score before starting flight training. Most fixed-wing pilot training occurs at Shindand Airbase, Afghanistan. Students learn basic flight skills in the Cessna C-182 and then progress to the Cessna C-208 for advanced training. Other initial pilot training occurs in the United Arab Emirates and the Czech Republic. Classes are full and training is progressing well. The C-182 and C-208 are less complicated to maintain and have high sortie production rates. C-130 training is at Little Rock Air Force Base, Arkansas. Two students are in training and scheduled for completion commensurate with the delivery of the first aircraft in September/October 2013. Six other C-130 pilot candidates are in English language training, four of whom are scheduled to start pilot training late Fall 2013. Ten additional C-130 pilot candidates have been identified but have not started training. C-130 loadmasters and engineers have been identified and are enrolled in English language training. C-130 loadmasters and engineers have been identified and are enrolled in English language training. The initial two C-130 aircraft will be operational by Fall 2013 with U.S. Air Force aircrew support.

*Training Pipeline:* 104 students are in Undergraduate Pilot Training, Undergraduate Helicopter Pilot Training or Initial qualification Training: 6 in the United States, 48 in UAE, and 50 at Shindand Airbase: There are 441 students (aircrew and maintenance) in English training (various locations)—a 300-percent increase in the last 6 months.

**Q.3.** How will DOD assist the Afghans in recruiting and retaining pilots, flight engineers and maintenance technicians to successfully operate and maintain current and planned fleets? Planned fleets means aircraft beyond the SMW and in addition to PC-12's and Mi-17's.

**A.3.** DOD assistance to the Afghans is primarily through the advisory function. Advisors have helped develop and implement the high standards that have put the Afghan Air Force (AAF) at the top of all recruiting and retention benchmarks across the Afghan National Security Forces (ANSF).

Historically, the Afghan National Army (ANA) “pushed” new recruits to the AAF, many of whom did not possess the necessary literacy skills to be successful. Over the last several years, this has changed significantly such that the AAF now “pulls” quality recruits from the ANA to begin Air Force training. This January, the AAF Recruiting and Accessions Policy was signed and later reinforced by General Karimi (Chief of the General Staff) when he supported the AAF’s decision to reject unqualified recruits.

The U.S. 9th Air and Space Expeditionary Task Force-Afghanistan Commander (Senior Airman in country) has requested a professional U.S. Air Force recruiter to serve as a mentor to the AAF to strengthen recruiting practices and develop the organization and messages to increase recruiting. Sourcing is in progress.

AAF retention rates are the highest in the ANSF. Recruiting outstrips losses (retirements and separations) and many Afghans choose to remain in the AAF for a variety of reasons. Some of those reasons include incentive pay for specialized career skills such as pilots, maintenance personnel, and English competency. The AAF also has a leave policy allowing service members the time to visit with family. Cultural ties to family are important and the AAF provides stability by living in one location near family. Finally, combat losses and operations tempo are considerably less than their Army counterparts.

**Q.4.** What incentives, if any, will the Afghans provide pilots, flight engineers and maintenance technicians to ensure they do not complete the vetting process, acquire training and separate from service to operate and maintain current and planned fleets? Planned fleets means aircraft beyond the SMW and in addition to PC-12’s and Mi-17’s.

**A.4.** Afghan Air Force (AAF) retention rates are the highest of all the Afghan National Security Forces. Recruiting outstrips losses and many Afghans choose to remain in the AAF for a variety of reasons. Some reasons include incentive pay for specialized career skills such as pilots, maintenance personnel, and English competency, or the leave policy that allows members time to visit with family members. Cultural ties to family members are important, and the AAF provides stability by living in one location near family. Finally, combat losses and operations tempo are considerably less than their Army counterparts.

Furthermore, once an Afghan joins the AAF and becomes an officer, the Inherent Law for Officers and Noncommission Officers requires them to serve for at least 10 years. No external “pull” to leave the AAF exists at this time. Unlike the United States, where major airlines or financially lucrative opportunities cause U.S. Air Force pilot retention challenges, the Afghan economy remains less attractive to many AAF members. Stable and safe employment with competitive pay and leave policies are positive factors motivating many Afghans to remain in service. Many AAF officers must

be forced to retire at their high year tenure marks, making room for new officers that will lead the AAF.

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**RESPONSE TO WRITTEN QUESTIONS OF SENATOR CRAPO  
FROM ERIC L. HIRSCHHORN**

**Q.1.** The Federal Government has not used the loan and loan guarantee authorities provided for in Title III in more than 30 years.

Under what circumstances were they used and why are they not used today, and if not used, should they be removed from the Act?

**A.1.** The Department of Commerce (Commerce) does not have a Title III program and does not have any information on the circumstances associated with the previous use of the loan and loan guarantee authorities. The Department of Defense is currently the only Federal agency with an active Title III program. Commerce believes that the Department of Defense is better suited to respond to this question based on its extensive history administering its Title III program and related Title III projects.

**Q.2.** Similarly, the Title VII authority for a National Defense Executive Reserve appears dated, at least, in some of its language. It also either has never been used, or has been dormant for decades, does it need to be updated or eliminated?

**A.2.** Commerce did have a National Defense Executive Reserve (NDER) program from the mid-1950s to the mid-1990s. The focus of the program was to support mobilization planning in the event of a national emergency. Commerce dissolved its NDER unit in May 1997 after concluding that the maintenance of a cadre of industry executives was no longer necessary in light of the end of the cold war. Commerce has no current plans to reestablish a NDER program. The Department of Homeland Security has been delegated the responsibility for overall coordination of the Federal Government's NDER program, most recently in Executive Order 13603 of (March 16, 2012 (77 Fed. Reg. 16651, Mar. 22, 2012)). Commerce believes that the Department of Homeland Security is better suited to respond to the importance of the National Defense Executive Reserve authority as an element in national emergency planning in today's environment.

**Q.3.** Can you give any examples where DPA authorities, fell short in their implementation, or exceeded their scope or encountered any unintended consequences in any manner?

**A.3.** As noted in our testimony, the Defense Production Act (DPA) provides authority for a variety of Commerce programs of substantial importance to our Nation's security. The Defense Priorities and Allocations System (15 CFR part 700) facilitates the timely delivery of industrial resources to the Department of Defense, coalition partners, and increasingly to meet Homeland Security requirements. The DPA also facilitates valuable assessments of the health of key sectors of the defense industrial base and the impact of off-sets in defense trade.

Commerce cannot cite any examples where DPA authorities fell short in their implementation or exceeded their scope. Commerce did encounter an unintended consequence related to its reporting to Congress on off-sets in defense trade. Prior to 2008, Commerce's

Bureau of Industry and Security published only one version of its offsets in defense trade report which was first transmitted to Congress and then subsequently made available to the public. During an internal program review, the Bureau of Industry and Security determined that foreign offsets authorities were using the country-specific offset data included in the Commerce report as a tool to benchmark their offset requirements with those required by other foreign nations, which potentially could contribute to higher offset demands being imposed on U.S. companies in future defense competitions. Accordingly, beginning with the Bureau of Industry and Security's 13th Offsets in Defense Trade Report to Congress (December 2008), Commerce ceased making such data available to the public and instead included the data only in "For Official Use Only" annexes incorporated into the version of the report transmitted to Congress.

#### **DPAC**

**Q.4.** Since the Department of Commerce is a Defense Production Act Committee (DPAC) member, can you offer an assessment, as a participant on that Committee, as to whether DPAC has in your opinion effectively advised the President on the appropriate use of DPA authorities?

**A.4.** Commerce has participated in the interagency discussions associated with the establishment of the DPAC, including the development of its charter, and has supported study groups established by the DPAC. Commerce believes the DPAC can be a mechanism to share information among Federal agencies on the use of DPA authority (including through study groups established by the DPAC) and to develop recommendations for the effective use of DPA authorities.

**Q.5.** Can you provide us with an example or two of how the DPAC has improved the processes underlying the DPA authorities or how the authorities are used in the executive branch?

**A.5.** Commerce's National Institute of Standards and Technology worked closely with the Department of Defense in leading a DPAC study group that examined current domestic metal fabrication capabilities and national defense needs. The study group surveyed senior acquisition officials from across the Federal Government regarding unmet agency mission-critical component needs that are limited by current domestic metal fabrication capabilities. Based on this interagency discourse and subsequent industry engagement, the study group identified three primary cross-cutting risk areas that are essential to the national defense: castings, forgings, and machining, with forged-quality metal components representing the highest-priority industrial base shortfall within metal fabrication. This work has helped inform the Department of Defense on its potential use of the Title III authority.

#### **Commerce Regulations**

**Q.6.** The Department of Commerce has issued its proposed rule-making on its Defense Priority Allocation System, or DPAS, in 2010, but it has yet to be finalized, can you comment on the delay?

**A.6.** In June 2010, Commerce's Bureau of Industry and Security published a proposed rule to update the Defense Priorities and Allocations System regulations (15 CFR part 700) (75 FR 32122, June 7, 2010). The Bureau of Industry and Security received only one comment on that proposed rule. The Bureau of Industry and Security has reassessed some aspects of the June 2010 proposed rule, based in part on our ongoing engagement with the five other departments that have been delegated priorities and allocations authority by the President (Agriculture, Defense, Energy, Health and Human Services, and Transportation) and with the Department of Homeland Security. We will be publishing a new proposed rule in the early fall.

**Q.7.** What needs to be done to improve the process of issuing the priorities and allocations under the DPAS regulations?

**A.7.** Based on our experience, no improvements are needed to the process at this time. As noted in our testimony, Commerce has delegated authority to the Departments of Defense, Energy, and Homeland Security, and the General Services Administration, to place priority ratings on contracts or orders for industrial resources to support programs determined by Defense, Energy, or Homeland Security as "necessary or appropriate to promote the national defense." Commerce may also authorize other Government agencies, foreign governments, owners and operators of critical infrastructure, or companies to place priority ratings on contracts or orders on a case-by-case basis. Such requests must first be determined as "necessary or appropriate to promote the national defense" by the Departments of Defense, Energy, or Homeland Security. The current framework has proven effective in facilitating the timely delivery of industrial resources needed to support our national defense, including military, homeland security, emergency preparedness, and critical infrastructure protection and restoration requirements.

**Q.8.** If the Defense Department is using the process 300,000 times a year, what type of coordination or oversight role do you have with it?

**A.8.** Commerce has delegated authority to the Department of Defense to place priority ratings on contracts or orders for industrial resources to support programs determined by Defense as "necessary or appropriate to promote the national defense" without coming to Commerce on a case-by-case basis. The Department of Defense is authorized by Commerce to use both DPAS levels of priority, designated by the symbols "DO" and "DX." All "DO" rated orders have equal priority with each other and take preference over unrated orders. All "DX" rated orders have equal priority with each other and take preference over "DO" rated orders and unrated orders.

The Commerce delegation also provides that Defense may sponsor requests for special priorities assistance upon determining the need for the requested assistance in support of military programs. Since 2005, Commerce has taken more than 250 official actions, in accordance with the DPAS, in response to requests for special priorities assistance endorsed by Defense, many related to directly supporting U.S. and coalition forces operating in Afghanistan and Iraq.

Commerce also supports the Department of Defense's Priority Allocation of Industrial Resources (PAIR) Task Force which was established by Defense to address circumstance where there are competing Defense program requirements for limited resources. Commerce may be asked by the Department of Defense to take action through the DPAS to implement a Priority Allocation of Industrial Resources (PAIR) decision reflecting Defense's highest priority requirements, such as issuing a directive to a U.S. company that establishes priorities and deadlines for identified contracts and orders that are supporting urgent operational requirements.

The Commerce delegation provides that Defense conduct a continuing training program to ensure that appropriate Department of Defense and contractor personnel are thoroughly familiar with the DPAS regulation and the provisions and limitations of Commerce's DPAS delegation to Defense. Commerce works closely with Defense in supporting DPAS training activity, including coordinating with the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, the Defense Acquisition University, and the Defense Contract Management Agency on activity to educate the Defense acquisition community and Department of Defense suppliers. Commerce has also established a DPAS Web site with a wide range of DPAS resources, including links to the DPAS regulation, DPAS training tools and DPAS guidance issued by the Office of the Deputy Assistant Secretary for Manufacturing and Industrial Base Policy for other Defense components.

**Q.9.** Are there any recent examples where special priorities assistance was required and what was done by your staff to resolve the issues?

**A.9.** Commerce's Bureau of Industry and Security worked closely with the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy in March 2013 to expedite the delivery of certain specialized bearings needed to manufacture a new mortar system. In this case, the Department of the Army requested special priorities assistance on behalf of the supplier of the 120mm Enhanced Mortar Targeting Systems (EMTAS). The Joint Chiefs of Staff had highlighted the military importance of deploying these systems to Afghanistan as rapidly as possible under a "Joint Urgent Operational Need" statement.

The EMTAS supplier needed assistance in expediting the delivery of certain bearings used in these systems because the bearing supplier was unable to meet the EMTAS program's required delivery schedule. After receiving guidance from the Department of Defense that the EMTAS requirement was the highest Department of Defense priority being supported by the bearing vendor, Commerce worked closely with the EMTAS supplier, the bearing vendor, the Office of the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, and the Department of the Army program office to develop a plan for expediting delivery. This plan was executed through the issuance of a DPAS directive by Commerce that required the bearing vendor to give its EMTAS-related orders priority over other defense and commercial orders. The directive also established a detailed schedule for delivering the critical items to the EMTAS supplier over a 5-week period.

**RESPONSE TO WRITTEN QUESTIONS OF SENATOR CRAPO  
FROM RICHARD SERINO**

**TITLE III**

**Q.1.a.** The Federal Government has not used the loan and loan guarantee authorities provided for in Title III in more than 30 years.

Under what circumstances were they used and why are they not used today, and if not used, should they be removed from the Act?

**A.1.a.** The Department of Homeland Security (DHS) defers to the Department of Defense (DOD) to address how these authorities were used and if they are not used today. These authorities are valuable preparedness tools that can be used to support national defense production and supply needs and should remain in the DPA.

**Q.1.b.** Similarly, the Title VII authority for a National Defense Executive Reserve appears dated, at least, in some of its language. It also either has never been used, or has been dormant for decades, does it need to be updated or eliminated?

**A.1.b.** DHS does not believe that the current language regarding an industry reserve needs to be revised or eliminated. While there are no active National Defense Executive Reserve (NDER) units in the Federal Government currently, this authority is appropriate to govern the establishment of future units in the event of a catastrophic incident to warrant its use.

**Q.1.c.** Can you give any examples where DPA authorities, fell short in their implementation, or exceeded their scope or encountered any unintended consequences in any manner?

**A.1.c.** The DPA authorities have been proven effective over the course of more than six decades of use. The priorities authority continues to be a key element in supporting DOD procurement and has also provided support for important homeland security activities—both for disaster preparedness and response and for homeland security activities. Witnesses from FEMA, DOD and the Department of Commerce have all provided examples of how effective the recent and ongoing use of the priorities authority is to support military and homeland security supply needs.

**DPAC**

**Q.2.a.** There are some 13 departments and agencies with delegable authority under the DPAC umbrella. Governmentwide, then, it seems that Title I holds the biggest potential for the use DPA authorities.

How much is the Defense Production Act Committee focused on Title I versus Title III authorities?

**A.2.a.** Both the Department of Homeland Security (DHS) and Department of Defense (DOD) are leading initiatives to study Title I and Title III authorities. DHS has put together a study group focused on Title I authorities, and DOD has established four separate study groups to conduct industrial base assessments in each of those focus areas to determine whether use of Title III authorities is warranted.

**Q.2.b.** Is emergency preparedness getting sufficient attention in the DPAC?

**A.2.b.** DHS believes that emergency preparedness is receiving sufficient attention in the DPAC at this time.

**Q.2.c.** How useful or valuable is the work and focus of DPAC to the more nondefense-oriented agencies or departments?

**A.2.c.** There have been several informative discussions that allow for a heightened awareness among DPAC members regarding how Title I authorities could potentially be used to support national defense activities, including nonmilitary related activities.

### **DPA and the business community**

**Q.3.a.** Some might argue that there may be a lack of understanding in terms of the business community and the expectations placed on it by Title I authorities.

In a major disaster situation, is the business community sufficiently prepared to fulfill contracts prioritized pursuant to the DPA?

**A.3.a.** DHS cannot speak for the entire business community, but no contractor compliance issues have been submitted to DHS for resolution.

**Q.3.b.** Is the business community completely aware of all that is required of it to do so?

**A.3.b.** Priority-rated contracts, orders, and subcontracts have been placed in support of national defense programs since the DPA priorities authority was first enacted in 1950. As a result, the business community engaged in national defense procurement at the prime or supplier level is well-versed in policy and procedures governing use of the priorities authority. Priorities system policy and procedures for the materials, services and facilities under the Department of Commerce's priorities and allocations jurisdiction are spelled out in comprehensive detail in the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700), which is administered by the Department of Commerce. At this time, the DPAS is the only priorities system that is actively used. The DPAS policy and procedures have been used as a template for new priorities rules issued by other Federal departments that are delegated priorities authority under Executive Order 13603.

**Q.3.c.** What does the Federal Emergency Management Agency, or FEMA, do to ensure the full participation of industry?

**A.3.c.** Although FEMA rarely uses this authority, FEMA does reach out to industry to explain how priority ratings are used when there is a need to ensure the timely delivery of an item or service.